CODE OF ORDINANCES

TOWN OF

WHITEHALL, MONTANA

Published in 2017 by Order of the Town Council

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OFFICIALS

of the

TOWN OF

WHITEHALL, MONTANA

AT THE TIME OF THIS RECODIFICATION

Dale Davis
Mayor

Mac Smith
Gerry Keogh
Gary Housman
Joe Adams
Town Council

Ed Guza
Town Attorney

Summer Fellows
Town Clerk-Treasurer

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the Town of Whitehall, Montana.

Source materials used in the preparation of the Code were the Prior Code, as amended through May 7, 2000, and ordinances subsequently adopted by the town council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the Prior Code, as amended, and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by

using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CODE	CD1:1
CODE APPENDIX	CDA:1
CODE COMPARATIVE TABLES	CCT:1
STATE LAW REFERENCE TABLE	SLT:1
CODE INDEX	CDi:1

Index

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself that stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted.

These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Roger D. Merriam, Senior Code Attorney, and Rebecca Evans, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Ms. Summer Fellows, Town Clerk-Treasurer, for cooperation and assistance during the progress of the work on this publication. It is hoped that her efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the town readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the town's affairs.

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CODE OF ORDINANCES

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

The ordinances embraced in this and the following chapters shall constitute and be designated the "Code of Ordinances, Town of Whitehall, Montana," and may be so cited. Such Code may also be cited as the "Whitehall Code."

State law reference—Authority for codification and revision of ordinances, MCA 7-5-103(2).

Sec. 1-2. Definitions and rules of construction.

The following definitions and rules of construction shall apply to this Code and to all ordinances and resolutions unless the context requires otherwise:

Generally. When provisions conflict, the specific shall prevail over the general. All provisions shall be liberally construed so that the intent of the town council may be effectuated. Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings.

Code. The term "Code" means the Code of Ordinances, Town of Whitehall, Montana, as designated in section 1-1.

Computation of time. In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday or legal holiday.

Conjunctions. In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either ... or," the conjunction shall be interpreted as follows, except that in appropriate cases, the terms "and" and "or" are interchangeable:

(1) The term "and" indicates that all the connected terms, conditions, provisions or events apply.

(2) The term "or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.

(3) The terms "either ... or" indicate that the connected terms, conditions, provisions or events apply singly but not in combination.

County. The term "county" means Jefferson County, Montana.

Delegation of authority. A provision that authorizes or requires a town officer or town employee to perform an act or make a decision authorizes such officer or employee to act or make a decision through subordinates.

Gender. Words of one gender include all other genders.

Includes, including. The terms "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and the use of the terms does not create a presumption that components not expressed are excluded.

Joint authority. A grant of authority to three or more persons as a public body confers the authority to a majority of the number of members, as fixed by statute or ordinance.

May. The term "may" creates discretionary authority or grants permission or a power.

May not. The term "may not" imposes a prohibition.

MCA. The abbreviation "MCA" or "Montana Code Annotated" means the Montana Code Annotated, as now or hereafter amended.

Month. The term "month" means a calendar month.

Must. The term "must" imposes a duty.

Must not. The term "must not" imposes a prohibition.

Number. The singular include the plural and the plural include the singular.

Oath. The term "oath" includes an affirmation.

Officers, departments, etc. References to officers, departments, boards, commissions or employees are to town officers, town departments, town boards, town commissions and town employees.

Owner. The term "owner," as applied to property, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or part of such property.

Person. The term "person" means any corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity.

Personal property. The term "personal property" means any property other than real property.

Premises. The term "premises," as applied to real property, includes lands and structures.

Property. The term "property" means real and personal property.

Real property. The term "real property" includes lands, tenements and hereditaments.

Shall. The term "shall" imposes a duty.

Shall not. The term "shall not" imposes a prohibition.

Sidewalk. The term "sidewalk" means that portion of the street between the curb or lateral line of the roadway, and the adjacent property line, intended for the use of pedestrians.

Signed. The term "signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.

State. The term "state" means the State of Montana.

State statutes. References to "state statutes" or codes are to the same as amended.

Swear. The term "swear" includes the term "affirm."

Tense. The present tense includes the past and future tenses. The future tense includes the present tense.

Town. The term "town" means the Town of Whitehall, Jefferson County, Montana.

Town council. The term "town council" or "council" means the town council, being the governing body.

Week. The term "week" means a period of seven consecutive days.

Written. The term "written" includes any form of words, letters, symbols or figures.

Year. The term "year" means 12 consecutive months.

Sec. 1-3. Catchlines of sections; history notes; references.

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the section, nor, unless expressly so provided, shall they be so deemed when any such section, including the catchline, is amended or reenacted.

(b) The history or source notes appearing in parentheses after a section in this Code have no legal effect and only indicate legislative history. Charter references, cross references, editor's notes, and state law references that appear in this Code after sections or subsections or that otherwise appear in footnote form are provided for the convenience of the user of this Code and have no legal effect.

(c) Unless specified otherwise, all references to chapters or sections are to chapters or sections of this Code.

Sec. 1-4. Effect of repeal of ordinances.

(a) Unless specifically provided otherwise, the repeal of a repealing ordinance does not revive the ordinance originally repealed or impair the effect of any savings provision in it.

(b) The repeal or amendment of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor does such repeal or amendment affect any suit, prosecution or proceeding pending at the time of the amendment or repeal.

Sec. 1-5. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion in this Code. Portions of this Code repealed by subsequent ordinances may be excluded from this Code by omission from reprinted pages affected thereby.

(b) Amendments to provisions of this Code may be made with the following language: "Section (chapter, article, division or subdivision, as appropriate) _____ of the Whitehall Code is hereby amended to read as follows:...."

(c) If a new section, subdivision, division, article or chapter is to be added to this Code, the following language may be used: "Section (chapter, article, division or subdivision, as appropriate) _____ of the Whitehall Code is hereby created to read as follows:...."

(d) All provisions desired to be repealed should be repealed specifically by section, subdivision, division, article or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing ordinance.

Sec. 1-6. Supplementation of Code.

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the town. A supplement to this Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in this Code. The pages of the supplement shall be so numbered that they will fit properly into this Code and will, where necessary, replace pages that have become obsolete or partially obsolete. The new pages shall be so prepared that when they have been inserted, this Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of this Code that have been repealed shall be excluded from this Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as necessary to do so in order to embody them into a unified Code. For example, the person may:

(1) Arrange the material into appropriate organizational units.

(2) Supply appropriate catchlines, headings and titles for chapters, articles, divisions, subdivisions and sections to be included in this Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in this Code.

(3) Assign appropriate numbers to chapters, articles, divisions, subdivisions and sections to be added to this Code.

(4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections.

(5) Change the words "this ordinance" or similar words to "this chapter," "this article," "this division," "this subdivision," "this section" or "sections _____ to _____" (inserting section numbers to indicate the sections of this Code that embody the substantive sections of the ordinance incorporated in this Code).

(6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted in this Code.

Sec. 1-7. General penalty; continuing violations.

(a) In this section, "violation of this Code" means any of the following:

(1) Doing an act that is prohibited or made or declared unlawful, an offense, a violation or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.

(2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.

(3) Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense, a violation or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.

(b) In this section "violation of this Code" does not include the failure of a town officer or town employee to perform an official duty unless it is specifically provided that the failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code shall be punished by a fine of not more than $500.00, or by imprisonment not to exceed six months, or by both such fine and imprisonment.

(d) The penalty imposed for a violation of this Code shall not exceed or be less than the penalty prescribed by state law for the same or a similar offense.

(e) Except as otherwise provided by law or ordinance:

(1) With respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense.

(2) With respect to other violations, each violation constitutes a separate offense.

(f) If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case. If the judgment is for a fine and imprisonment until the fine is paid, the defendant must be committed to the custody of the proper officer and detained and allowed credit for each day of incarceration as provided in MCA 46-18-403.

(g) The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise or other administrative sanctions.

(h) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief or civil or quasi-judicial enforcement.
(Prior Code §§ 1-03-010—1-03-040)

State law reference—Limitation on penalties, MCA 7-1-111(8), 7-5-109.

Sec. 1-8. Severability.

If any provision of this Code or its application to any person or circumstance is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Code that can be given effect without the invalid or unconstitutional provision or application, and to this end, the provisions of this Code are severable.

Sec. 1-9. Provisions deemed continuation of existing ordinances.

The provisions of this Code, insofar as they are substantially the same as legislation adopted by the town relating to the same subject matter, shall be construed as reinstatements and continuations thereof and not as new enactments.

Sec. 1-10. Code does not affect prior offenses or rights.

(a) Nothing in this Code or the ordinance adopting this Code affects any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established before the effective date of this Code.

(b) The adoption of this Code does not authorize any use, or the continuation of any use, of a structure or premises in violation of any town ordinance on the effective date of this Code.

Sec. 1-11. Certain ordinances not affected by Code.

(a) Nothing in this Code or the ordinance adopting this Code affects the validity of any ordinance or portion of an ordinance not codified in this Code:

(1) Annexing property into the town or describing the corporate limits.

(2) Deannexing property or excluding property from the town.

(3) Promising or guaranteeing the payment of money or authorizing the issuance of bonds or other instruments of indebtedness.

(4) Authorizing or approving any contract, deed, or agreement.

(5) Making or approving any appropriation or budget.

(6) Providing for salaries of employees or other employee benefits or job descriptions for employee positions.

(7) Granting any right or franchise.

(8) Adopting or amending the comprehensive plan.

(9) Levying or imposing any special assessment.

(10) Establishing a curbline.

(11) Dedicating, establishing naming, locating, relocating, opening, paving, widening, repairing or vacating any street.

(12) Establishing the grade of any street or sidewalk.

(13) Dedicating, accepting or vacating any plat or subdivision.

(14) Levying or imposing or otherwise related to taxes.

(15) Rezoning property.

(16) That is temporary, although general in effect.

(17) That is special, although permanent in effect.

(18) The purpose of which has been accomplished.

(b) The ordinances designated in subsection (a) of this section continue in full force and effect to the same extent as if published at length in this Code.

Chapter 2

ADMINISTRATION*

Article I. In General

Article II. Town Council

Division 1. Generally

Division 2. Meetings

Article III. Officers, Employees and Departments

Division 1. Generally

Division 2. Clerk-Treasurer

Division 3. Town Marshal

Division 4. Deputy Town Marshal

***State law reference**—Local government generally, MCA title 7.

Article VI. Annexation with Provision of Services

ARTICLE I. IN GENERAL

Sec. 2-1. Circular seal.

A seal in a circular form with the words "Town of Whitehall, Montana" on the outer circle, and in the interior and center of said circle, the words "Jefferson County" shall be the seal of the town, to be used in all cases in which, by the laws and customs of nations, it is necessary to use a seal by a corporation.
(Prior Code, § 1-01-010; Ord. of 2-14-2008)

State law reference—Seal authorized, MCA 7-1-4124(13).

Secs. 2-2—2-20. Reserved.

ARTICLE II. TOWN COUNCIL*

DIVISION 1. GENERALLY

Sec. 2-21. Compensation.

The following elected officers shall receive compensation as herein specified:

Officer	*Compensation*
Mayor	$600.00 per month
Councilmember	$50.00 per meeting

(Prior Code, § 2.64.010; Ord. of 8-1-2003; Ord. of 9-10-2012)

State law reference—Authority to determine salaries, MCA 7-4-2101.

Secs. 2-22—2-45. Reserved.

DIVISION 2. MEETINGS†

Sec. 2-46. Regular meetings.

The town council shall hold its regular meetings on the second Monday of each month at 7:30 p.m. Special meetings shall be called by the mayor, and must be called upon the demand of any two aldermen. The town clerk-treasurer shall, on their

*State law references—Municipal councils, MCA 7-5-4101 et seq.; legislative powers, MCA 7-1-4123.
†State law reference—Council meetings, MCA 7-5-411 et seq.

requisition, give a reasonable notice in writing thereof to all of the members of the council. All meetings, unless otherwise ordered for good cause, shall be held in the council chambers.
(Prior Code, § 2.12.010)

Sec. 2-47. Hour and 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 pro tempore, or in the absence of both, by the town clerk-treasurer. Upon the appearance of a quorum, the council shall proceed to business in the following order:

(1) Reading, amending and approving the minutes of the previous meeting.

(2) Reports of officers.

(3) Reports of standing committees.

(4) Reports of special committees.

(5) Presentation of petitions and communications.

(6) New business.
(Prior Code, § 2.12.020)

Secs. 2-48—2-67. Reserved.

ARTICLE III. OFFICERS, EMPLOYEES AND DEPARTMENTS

DIVISION 1. GENERALLY

Sec. 2-68. Mayor to nominate officers.

The mayor shall nominate, and by and with the advice and consent of the council, appoint a town attorney, a town clerk-treasurer, a town marshal, and any other officers or assistants necessary to carry on the business of the town.
(Prior Code, § 2.08.010)

State law reference—Appointment of officers authorized, MCA 7-4-4103.

Sec. 2-69. Compensation.

The compensation of officers and employees shall be paid monthly by warrants drawn by the town clerk-treasurer upon the town treasury in the amounts provided by ordinance.
(Prior Code, § 2.08.050)

Sec. 2-70. Bond.

All other officers and employees other than the town clerk-treasurer shall be covered by a blanket fidelity bond, with the premium to be paid for by the town.
(Prior Code, § 2.36.020)

State law reference—Official bonds, MCA 7-4-4109.

Secs. 2-71—2-98. Reserved.

DIVISION 2. CLERK-TREASURER

Sec. 2-99. Bond of town clerk-treasurer.

The town clerk-treasurer shall be covered by a fidelity bond in the amount established by the town council.
(Prior Code, § 2.36.010)

State law reference—Official bonds, MCA 7-4-4109.

Sec. 2-100. Town clerk-treasurer.

The town clerk-treasurer shall perform the following duties:

(1) Attend all meetings of the council, record and sign the proceedings or minutes thereof and all ordinances passed, bylaws and resolutions adopted and contracts entered into, and keep a record of all licenses, commissions or permits granted or authorized by the council.

(2) Enter in "The Ordinance Book" all ordinances and resolutions passed and adopted by the council.

(3) Keep a finance book as provided by law.

(4) Perform all other duties required by the laws of the state.

(5) Perform all the duties of town treasurer. The town treasurer shall perform those duties specified in MCA 7-6-4402.

(Prior Code, §§ 2.08.020, 2.08.040)

Secs. 2-101—2-128. Reserved.

DIVISION 3. TOWN MARSHAL

Sec. 2-129. Definition of office.

There is hereby created the municipal office of town marshal.

(1) Said town marshal shall be clothed with full power and authority to enforce all ordinances of the town, laws of the state, and laws of the United States of America, within the bounds of his authority as prescribed by law.

(2) The town marshal shall perform the general duties of a municipal police officer and peace officer, and perform other duties and functions as may be directed by the mayor or town council, when in session and acting as a whole.

(3) The town marshal shall reside within the corporate limits of the town.

(Prior Code, § 2.52.010)

Sec. 2-130. Appointment.

The mayor shall nominate and, by and with the advice and consent of the council, appoint a town marshal.

(Prior Code, § 2.52.050)

State law reference—Appointment of marshal, MCA 7-4-4103.

Sec. 2-131. Suspension and/or removal from office.

The town marshal shall be subject to suspension or removal in accordance with the provisions of state law.

(Prior Code, § 2.52.030)

State law reference—Removal of appointed officers, MCA 7-4-1113.

Secs. 2-132—2-160. Reserved.

DIVISION 4. DEPUTY TOWN MARSHAL

Sec. 2-161. Definition of office.

There is hereby created the municipal office of deputy town marshal.

(1) Said deputy town marshal shall be clothed with full power and authority to enforce all ordinances of the town, laws of the state, and laws of the United States of America, within the bounds of his authority as prescribed by law.

(2) The deputy town marshal shall perform the general duties of a municipal police officer and peace officer.

(3) The deputy town marshal shall reside within the corporate limits of the town.
(Prior Code, § 2.53.010)

Sec. 2-162. Appointment.

The mayor shall nominate, and by and with the advice and consent of the council, appoint a deputy town marshal.
(Prior Code, § 2.53.050)

State law reference—Appointment of officers, MCA 7-4-4103.

Sec. 2-163. Suspension and/or removal from office.

The deputy town marshal shall be subject to suspension or removal in accordance with the provisions of state law.
(Prior Code, § 2.53.030)

State law reference—Removal of appointed officers, MCA 7-4-1113.

Secs. 2-164—2-194. Reserved.

DIVISION 5. WATER AND SEWER SUPERINTENDENT

Sec. 2-195. Definition of office.

(a) The water and sewer superintendent shall be clothed with full power and authority to provide water and sewer service inclusive of supervision of the sewer treatment plant, water towers and fire hydrants.

(b) The water and sewer superintendent shall perform the general duties necessary to carry out the specific duties and responsibilities and perform other duties and functions as may be directed by the mayor or town council as a whole.
(Prior Code, § 2.54.010; Ord. of 6-20-1990)

Sec. 2-196. Appointment.

The mayor shall nominate, and by and with the consent of the council, fill the position of water and sewer superintendent. Such appointee shall hold such position as may be designated by the mayor, with the consent of the council.
(Prior Code, § 2.54.050; Ord. of 6-20-1990)

State law reference—Appointment of officers, MCA 7-4-4103.

Sec. 2-197. Suspension and/or removal from office.

The water and sewer superintendent shall be subject to suspension or removal in accordance with the provisions of state law.
(Prior Code, § 2.54.030; Ord. of 6-20-1990)

State law reference—Removal of appointed officers, MCA 7-4-1113.

Secs. 2-198—2-217. Reserved.

DIVISION 6. PUBLIC WORKS DIRECTOR

Sec. 2-218. Definition of office.

(a) The public works director shall be clothed with full power and authority to provide garbage service, road maintenance, vehicle maintenance and supervision of parks and cemeteries.

(b) The public works director shall perform the general duties necessary to carry out the specific duties and responsibilities and perform other duties and functions as may be directed by the mayor or town council from time to time.
(Prior Code, § 2.58.010; Ord. of 4-8-2002)

Sec. 2-219. Appointment.

The mayor shall nominate, and by and with the consent of the council, fill the position of public works director. Such appointee shall hold such position as may be designated by the mayor, with the consent of the council.
(Prior Code, § 2.58.050; Ord. of 4-8-2002)

State law reference—Appointment of officers, MCA 7-4-4103.

Sec. 2-220. Suspension and/or removal from office.

The public works director shall be subject to suspension or removal in accordance with the provisions of state law.
(Prior Code, § 2.58.030; Ord. of 4-8-2002)

State law reference—Removal of appointed officers, MCA 7-4-1113.

Secs. 2-221—2-248. Reserved.

DIVISION 7. ASSISTANT PUBLIC WORKS DIRECTOR

Sec. 2-249. Definition of office.

(a) The assistant public works director shall be clothed with full power and authority to provide garbage service, road maintenance, vehicle maintenance, park and cemetery maintenance, assist the public works director with water and wastewater systems, and any other duties required by the town, under the direction of the public works director.

(b) The assistant public works director shall perform the general duties necessary to carry out the specific duties and responsibilities and perform other duties and functions as may be directed by the public works director. If the public works director is not available, then the mayor shall direct the duties of the assistant public works director. From time to time, in the event the public works director or mayor is not available to so direct, the president of the council or two council members shall direct the duties of the assistant public works director.
(Prior Code, § 2.59.010; Ord. of 4-8-2002)

Sec. 2-250. Appointment.

The position of assistant public works director shall be filled as provided in the town policy manual. The mayor shall nominate, and by and with consent of the council, fill the position of assistant public works director. Such appointee shall hold such position as may be designated by the mayor, with consent of the council. Performance reviews shall be conducted as provided in the policy manual.
(Prior Code, § 2.59.050; Ord. of 4-8-2002)

State law reference—Appointment of officers, MCA 7-4-4103.

Sec. 2-251. Suspension and/or removal from office.

The assistant public works director shall be subject to suspension or removal in accordance with the provisions of state law.
(Prior Code, § 2.59.030; Ord. of 4-8-2002)

State law reference—Removal of appointed officers, MCA 7-4-1113.

Secs. 2-252—2-280. Reserved.

ARTICLE IV. BOARDS, COMMISSIONS AND AUTHORITIES

DIVISION 1. GENERALLY

Secs. 2-281—2-308. Reserved.

DIVISION 2. TOWN PLANNING BOARD*

Sec. 2-309. Creation of planning board.

There is hereby created and established a town planning board, which shall be known as "The Whitehall Town Planning Board," but the same shall be referred to herein as "town planning board."
(Prior Code, § 2.60.010; Ord. of 1-14-2013)

State law reference—Planning board authorized, MCA 76-1-101.

Sec. 2-310. Number of members.

Said town planning board shall consist of five members who shall be appointed in the following manner, to-wit:

(1) One member shall be appointed by the town council from its own membership, who shall be known as an official member.

(2) One member shall be appointed by the town council, who in the discretion of said town council, may be an office holder of said town, or an office holder of said county, or an employee of said town, or an employee of said county or otherwise; provided, however, that if said appointee is an office holder he shall be an official member, but if not, such appointee shall be a citizen member.

(3) One member shall be appointed by the mayor upon the designation by the board of county commissioners of said county who shall be a resident within the jurisdictional area; provided, however, that if such designated appointee shall be an office holder of said county or an office holder of said town, such appointee shall be an official member, but if not, such appointee shall be a citizen member.

(4) Two members shall be appointed by the mayor who shall be residents within the town limits of said town, and who shall be citizen members.

(Prior Code, § 2.60.030; Ord. of 1-14-2013)

State law reference—Planning board membership, MCA 76-1-221 et seq.

Sec. 2-311. Term of office for official members.

Official members appointed to said town planning board shall have the term of office thereon coextensive with the term of public office for which said appointee has been elected or appointed.
(Prior Code, § 2.60.040; Ord. of 1-14-2013)

*__State law reference__—Planning boards, MCA 76-1-101 et seq.

Sec. 2-312. Term of office for citizen members.

Citizen members appointed to said town planning board shall be qualified by knowledge and experience in matters pertaining to the development of said town, and shall be residents of the jurisdictional area of said town planning board and shall hold no other office in said town, or in said county. The term of office of citizen members on said town planning board shall be for a term of two years; provided, however, that citizen members initially appointed by the mayor may, in the discretion of the mayor, be appointed for a term of one year.
(Prior Code, § 2.60.050; Ord. of 1-14-2013)

Sec. 2-313. Vacancies.

Vacancies on said town planning board during an unexpired term shall be filled for such unexpired term by the same appointing authority appointing the member whose vacancy is filled.
(Prior Code, § 2.60.100; Ord. of 1-14-2013)

Sec. 2-314. Salary and expenses.

Members of said town planning board shall receive no salary for serving on said town planning board; provided, however, that when said town planning board determines that it is necessary that members or employees thereof should attend in another town or county or state, regional or national conference, or interview dealing with planning or related problems, said town planning board may pay the actual expenses of the attending members or employees; provided, however, that the amount of such actual expenses has been made available in appropriations of said town planning board.
(Prior Code, § 2.60.070; Ord. of 1-14-2013)

State law reference—Compensation and expenses of board members and employees, MCA 76-1-307.

Sec. 2-315. Quorum.

A quorum of said town planning board shall be a majority of the members of said town planning board; provided, however, that no official action of said town planning board can be taken unless authorized by a majority of all members of said town planning board at a regular meeting thereof or at a special meeting thereof called for that purpose.
(Prior Code, § 2.60.060; Ord. of 1-14-2013)

State law reference—Similar provisions, MCA 76-1-304.

Sec. 2-316. Election of officers.

At its first regular meeting, said town planning board shall elect from its membership a president and a vice-president who shall have such power and authority conferred upon them by law, including, but not restricted to, MCA title 76, chapter 1 (MCA 76-1-101 et seq.), this article, and all other ordinances of said town, and the rules and regulations of said town planning board.
(Prior Code, § 2.60.090; Ord. of 1-14-2013)

Sec. 2-317. Secretary.

Said town planning board may appoint and fix the compensation of a secretary and such other employees as it may deem necessary and prescribe the powers, duties and responsibilities of such secretary and other employees.
(Prior Code, § 2.60.130; Ord. of 1-14-2013)

Sec. 2-318. Jurisdiction.

The jurisdictional area of said town planning board is hereby created and established to be the following area: All of the area within the town limits of said town.
(Prior Code, § 2.60.020; Ord. of 1-14-2013)

Sec. 2-319. Purposes and objectives of board.

The purposes and objectives for which said town planning board is hereby created and established and to which its attention and efforts are to be directed and to accomplish are:

(1) To promote the orderly development of said town, and its environs;

(2) To plan for the future development of the community to the end that highway systems are carefully planned, and that new community centers grow only with adequate facilities of highways and health and utilities and education and recreation;

(3) That in the future growth of the community, the needs of agriculture, industry and business are recognized;

(4) That residential areas provide healthy surroundings for family life; and

(5) That the growth of the community is commensurate with and promotive of the efficient and economical use of public lands.

(Prior Code, § 2.60.110; Ord. of 1-14-2013)

Sec. 2-320. Power and duties.

To effectuate the purposes and objectives of the town planning board it shall have all of the powers, duties and responsibilities conferred upon it or authorized by state law, this article and all other ordinances of said town, and the rules and regulations of said town planning board.
(Prior Code, § 2.60.120; Ord. of 1-14-2013)

State law reference—Planning commission functions, MCA 76-1-601 et seq.

Secs. 2-321—2-343. Reserved.

ARTICLE V. FINANCE*

Sec. 2-344. Monies received by officers.

All fines, fees or other monies received by town officers in the discharge of their duties shall be paid into the town treasury without delay unless otherwise provided by ordinance.
(Prior Code, §§ 2.08.030, 2.08.060)

Secs. 2-345—2-361. Reserved.

ARTICLE VI. ANNEXATION WITH PROVISION OF SERVICES†

Sec. 2-362. Petition by owners.

Whenever any owners of contiguous property desire to be annexed to the town, the procedure to be followed shall be that as is prescribed under MCA title 7, chapter 2, part 47 (MCA 7-2-4701 et seq.). Prior to consideration by the town council, the matter will be referred to the planning board for its recommendation to the town council.
(Prior Code, § 14.14.010; Ord. of 7-23-1981)

Sec. 2-363. Fees for annexation.

All petitioners for annexation shall pay an administration fee in the amount established by resolution to the town, for all tracts five acres or less, or five lots or less, plus

*State law reference—Finance generally, MCA 7-6-101 et seq.
†State law reference—Annexation by petition, MCA 7-2-4701 et seq.

all costs of publication and surveying expenses, any required recording fees and any other necessary charges. Administration fees for tracts over five acres or more than five lots will be determined by the town council.
(Prior Code, § 14.14.020; Ord. of 7-23-1981)

Sec. 2-364. Expenses of extension of utility service.

Owners of any contiguous tract being annexed, must bear all costs and expenses for the extension of utility service to said contiguous tract; said extension of utility service must meet state code requirements and planning board requirements; and the owner of the contiguous tract will be responsible for maintenance of said utility service for one year after installation and inspection.
(Prior Code, § 14.14.030; Ord. of 7-23-1981)

Chapter 3

RESERVED

Chapter 4

ANIMALS*

Article I. In General

Article II. Restrictions on Number of Animals

Article III. Care and Keeping of Animals

Article IV. Dogs

***State law references**—Animals generally, MCA 81-1-101 et seq.; animal abuse and cruelty, MCA 35-8-209 et seq.; power of local governments relative to animals, MCA 41-23-101 et seq.

ARTICLE I. IN GENERAL

Sec. 4-1. Keeping livestock under control.

(a) Every person, firm or corporation owning or having control of any of the following classes of domestic animals at any time in the town, shall keep the same within or upon his own premises at all times, except when such animals are necessarily passing through the public streets, and at such times the same shall be attended by some person competent to control and prevent such animals from damaging or troubling any person or property within the town: horses, mules, asses, cattle, sheep, goats, swine, chickens, ducks, turkeys, or any other bird or fowl.

(b) If any horses, mules, asses, cattle, sheep, goats, swine, bird or fowl, or other similar animals are found running at large within the corporate limits of the town, the town marshal is hereby authorized to impound the same in some suitable place to be designated by the town council and provide for the same until sold under the provisions of this chapter, or until the claimant of any such animal, or animals, shall pay to the town the sum established by resolution and take the animal away. Any sum of money paid to the town under this section shall be in addition to any fine.
(Prior Code, §§ 8.02.030, 8.06.010)

State law reference—Control of animals running at large, MCA 7-23-4101.

Secs. 4-2—4-20. Reserved.

ARTICLE II. RESTRICTIONS ON NUMBER OF ANIMALS

Sec. 4-21. Penalty for violation of article.

Any person, firm or corporation who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than $25.00 nor more than $250.00, or imprisonment not to exceed ten days, or both such fine and imprisonment at the discretion of the court. Each day that such violation is maintained shall constitute a separate offense.
(Prior Code, § 8.08.070)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 4-22. Exclusion of dogs.

The maintaining and keeping of dogs is specifically excepted from the provisions of this article.
(Prior Code, § 8.08.030)

Sec. 4-23. Confinement of animals.

Every person, firm or corporation owning, keeping or maintaining any domestic animals or poultry must keep such animals or poultry confined within a fence or similar enclosure and upon the private premises of their owner or person responsible for their maintenance or control.
(Prior Code, § 8.08.010)

Sec. 4-24. Limitations according to weight and land area.

On parcels of property comprised of one acre or less, there can be no more than three animals or poultry maintained or kept, and the total live weight of such three animals or poultry cannot exceed 100 pounds. On parcels of property exceeding one acre in size, there can be no more than three animals or poultry maintained or kept, but there shall be no limitation on the total live weight of such three animals or poultry.
(Prior Code, § 8.08.020)

Sec. 4-25. Commercial purposes.

The keeping or maintaining of animals or poultry for commercial purposes is specifically prohibited. For purposes of this section, the term "commercial" shall be defined as the keeping or maintaining of more than three animals or poultry.
(Prior Code, § 8.08.040)

Sec. 4-26. Abatement of conditions offensive or injurious to health.

Every person, firm or corporation keeping or maintaining animals or poultry in conformity with the restrictions of this article must not permit the keeping or maintenance of such animals or poultry to become offensive to neighbors or injurious to public health. If such activity becomes offensive to neighbors or injurious to public health, such activity shall be declared a nuisance, and as such shall be abated. No person, firm or corporation shall create, allow, or continue to allow any nuisance to exist on the premises on which he occupies or controls with respect to the keeping or maintaining of animals or poultry.
(Prior Code, § 8.08.050)

Secs. 4-27—4-55. Reserved.

ARTICLE III. CARE AND KEEPING OF ANIMALS

Sec. 4-56. Penalty for violation of article.

Before any prosecution is brought under this article, the town marshal shall deliver a notice to the party or parties creating a nuisance, and unless such nuisance is abated

within three days after receipt of such notice, a complaint will be filed against such person. After such three-day period, a complaint may be filed for any further annoyance or disturbance caused by such nuisance. Violation of any of the provisions of this article shall be deemed a misdemeanor, and any person, firm or corporation violating any of the provisions of this article shall, upon conviction thereof, be subject to a fine of not more than $100.00.
(Prior Code, § 8.06.040)

Sec. 4-57. Nuisances.

(a) It is a nuisance for any animal, including dogs, cats, insects, fowl or reptiles, to become injurious to the health or morals, or indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with comfortable enjoyment of life or property. Such a nuisance shall be abated.

(b) It shall be unlawful for any person to create, continue, or suffer a nuisance to exist on the premises which he occupies or controls.
(Prior Code, § 8.06.020)

Sec. 4-58. Offensive barns.

Any barn, stable, building, shed, yard, house or other place wherein any animal is or has been kept, which barn, stable, building, shed, yard, house or other place is suffered to become filthy or offensive to neighbors or passersby, or injurious to the health of any neighborhood, or tends to contaminate the atmosphere in any place in the town is declared to be a nuisance.
(Prior Code, § 8.06.030)

Secs. 4-59—4-89. Reserved.

ARTICLE IV. DOGS*

Sec. 4-90. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Current vaccination certificate means a vaccination certificate against rabies, which shall be dated within three years from the date that the application for a dog license is made.

*__State law reference__—Local government control of dogs, MCA 7-23-101 et seq.

Dog means male or female.

Harborer means a person who habitually lets or permits a dog to remain or be in or about his house or premises.

Owner means any person, firm, association or corporation owning, keeping or harboring a dog.

Pound means the place provided by the town or veterinarian for the impounding of dogs.

Public nuisance animal means any animal that unreasonably annoys humans, endangers the life or health of other animals or persons, or substantially interferes with the rights of citizens, other than their owners, to the enjoyment of life or property. A "public nuisance animal" shall mean and include, but not be limited to, any animal, including dogs, that:

(1) Is repeatedly found at-large;

(2) Damages the property of anyone other than its owner;

(3) Molests or intimidates pedestrians or passersby;

(4) Chases vehicles;

(5) Makes disturbing noises, including, but not limited to, continued and repeated howling, barking, whining, or other utterances causing unreasonable annoyance, disturbance, or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;

(6) Causes fouling of the air by odor and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;

(7) Causes unsanitary conditions in enclosures or surroundings where the animal is kept or harbored;

(8) Attacks other animals or is found to be a menace to the public health, welfare or safety.

Running at large means a dog is off the owned or leased premises of the dog owner, unless such dog is under leash or under the direct control of owner.

Vaccinate means the inoculation of a dog with an anti-rabies vaccine by any licensed veterinarian, the cost of said vaccination to be borne by the owner of the dog.

Vicious dog means any dog that bites any person, whether or not said person is on the property of the owner of said dog, or chases a person not trespassing on the property of, or injures or attempts to injure, the person, family or property of the person.
(Prior Code, § 8.04.010; Ord. of 8-8-2007, § 5-3A-1)

Sec. 4-91. Violations.

(a) *Complaint filed; hearing.* Whenever a complaint shall be filed with the city judge of the town stating that any dog has violated section 4-99 or 4-100, the city judge shall, at the time and place set for appearance, hear and determine the matter.

(b) *Order to remove from town.* If it shall appear that said dog has so violated section 4-99 or 4-100, the city judge may order the owner or keeper of said dog to remove the same from the corporate limits of the town within 24 hours from the time of making such order, and he shall continue the further hearing of the case.

(c) *Failure to comply.*

(1) *Fine.* In the event that the owner or keeper shall refuse or neglect to remove said dog from the corporate limits of the town, in compliance with the order of the city judge, such owner or keeper shall be subject to a fine of not less than $25.00 nor more than $500.00.

(2) *Disposition of animal.* It shall be the duty of the town marshal to kill any such dog whenever the same shall be found in the town at any time after such owner or keeper has refused or neglected to comply with the order herein provided for.

(d) *Violation.* Except as otherwise provided in this section, any owner found violating any provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $25.00 nor more than $500.00 and if such fine is not forthwith paid, shall be confined in the town jail one day for each $10.00 of such fine, until fully paid.
(Prior Code, §§ 8.04.130, 8.04.140; Ord. of 8-8-2007, §§ 5-3A-11, 5-3A-12)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 4-92. License; fee.

(a) *Annual license required.* Every person who owns or is in possession of a dog over the age of five months within the corporate limits of the town shall report to the town clerk-treasurer annually, on or before January 1 of each calendar year, his name and address and shall give the name, breed (if known), color and sex of each dog so owned

or kept. Registration must be issued to an adult member of the household. Proof of current rabies vaccination (within preceding 36 months) must be presented to the town clerk-treasurer.

(b) *Fee.* The owner shall pay the sum established by resolution, and if the dog is neutered, shall show proof that the dog is neutered. Such dog or dogs shall be registered for license in the office of the town clerk-treasurer.

(c) *Exemptions.* The provision of this section shall not apply to the following:

(1) Dogs brought into the town for the purpose of participating in any dog show or event, nor assistance dogs, properly trained to assist any person with impairment, when such dogs are actually being used by said impaired person for the purpose of aiding them.

(2) Hospitals, clinics and other premises operated by licensed veterinarians for the care and treatment of animals. The licensing and vaccination requirements of this article shall not apply to any animal belonging to a nonresident of the town and kept within the town limits for not longer than 30 days, provided all such dogs shall, at all times while in the town, be kept within a building enclosure or vehicle or be under the restraint of the owner. Any nonresident of the town who brings a dog into the town limits and allows it to run at large will be subject to the provisions of this article.

(Prior Code, § 8.04.020; Ord. of 8-8-2007, § 5-3A-2)

State law reference—Dog licensing, MCA 7-23-4102.

Sec. 4-93. Tag; collar.

(a) *Issuance of tag.* Upon payment of the license fee, the town clerk-treasurer shall issue to the owner a license certificate and a numbered metallic tag for each dog licensed. The shape of the tag shall change every year and shall have stamped thereon the year for which it is issued.

(b) *Collar required.* Every dog kept within the town shall be provided by the owner with a suitable collar to which said license shall be securely attached. No dog shall be permitted to be kept or remain in the town unless the owner thereof shall have caused such dog to be registered or licensed and provided with a suitable collar with license fastened thereto. However, it shall be lawful to remove such collar and license tag when such dog is under the immediate control of its owner.

(c) *Transferability.* Tags shall not be transferable from one dog to another.

(Prior Code, § 8.04.030; Ord. of 8-8-2007, § 5-3A-3)

Sec. 4-94. Running at large.

(a) No owner of any dog shall permit such dog to run at large at any time. However, if a dog escapes from its owner and its owner notifies police and is making concerted effort to locate and control the dog, said dog is not considered to be running at large.

(b) It shall be the duty of the police when they observe a dog running at large or when the police and/or town receive a complaint of a dog running at large, to diligently attempt to ascertain ownership of said dog running at large. A citation will either be mailed to the owner of said dog, by certified mail with return receipt requested, or personally served on the owner. The owner of said dog shall be fined $25.00 and be required to provide proof of licensing or purchase a license for said dog. The cited fine for said dog shall double for each new offense to a maximum of $500.00.
(Prior Code, § 8.04.00; Ord. of 8-8-2007, § 5-3A-4)

State law references—Control of animals running at large, MCA 7-23-4101; penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 4-95. Impounding.

(a) *Duty to impound.* If the police cannot ascertain ownership of a dog running at large, it shall be the duty of the town marshal or any employee designated by the town council for the purpose of enforcing this article to apprehend any dog running at large or unlicensed or without collar and license tag in violation of any one or more sections of this article and to impound such dog in a place designated by the town council.

(b) *Registry.* The town marshal, upon impounding any dog, shall make or cause to be made a complete registry, entering the apparent breed, color, sex and whether licensed. If licensed, he shall enter the name and address of the owner and the number of the license tag. The registry will be filed daily at the town office.

(c) *Enforcement authority.* Any person employed by the town for the purpose of enforcing sections 4-92 through 4-100 shall be under the authority of the town marshal.

(d) *Notice to owner and rescue organizations.* No later than 24 hours after the impounding of any dog, the owner shall be issued a citation either personally or by registered mail. If the owner is unknown and the dog is not a purebred dog (as defined by the American Kennel Club), notice shall be posted for four business days at the town office describing the dog and the time and place of taking. If the dog appears to be a purebred dog, the proper rescue organization for that breed shall be diligently contacted within 24 hours and cooperated with. Said rescue organization shall have four business days to make arrangements to place said dog and may do so after five business days if the owner of said purebred dog cannot be diligently located.

(e) *Redemption.* The owner of any dog so impounded may reclaim such dog upon the procuring of a license, if lacking, and the posting of a bond in the amount of $25.00 for the first offense. The bond shall double with each subsequent offense for said dog to a maximum of $500.00. The owner must pay all costs incurred to the place of impoundment.

(f) *No bond posted.* In the event a bond has not been posted for a non-purebred dog within four business days from the date of impoundment, the dog shall be subject to extermination. In the event a bond has not been posted within six days from the date of impoundment, for a dog that appears to be a purebred and a rescue organization cannot or will not place the dog, the dog shall be subject to extermination. Prior to extermination, written notification shall be sent by registered mail or delivered personally to the owner of the dog and if the dog appears purebred, to the breed rescue organization.

(g) *Disposition of unclaimed dogs.* Every dog impounded shall be held for a period of four business days, or if it appears to be purebred, for six business days after such impounding and, if not claimed by the owner or by some person acting on the owner's behalf who pays the impounding fees or, if not placed by the breed rescue organization, said dog may be disposed of in a humane manner or turned over to some person who agrees to find a home for the dog.

(Prior Code, §§ 8.04-050—8.04.070; Ord. of 8-8-2007, § 5-3A-5)

State law reference—Impoundment and redemption of dogs and cats, MCA 7-23-4201 et seq.

Sec. 4-96. Provoking animals.

It is unlawful for any person to provoke, harangue, tease, torment or in any way disturb a dog or other animal with the intent to cause it to bark or attack any person.

(Prior Code, § 8.04.080; Ord. of 8-8-2007, § 5-3A-6)

Sec. 4-97. Rabid animals.

(a) *Animal bite; quarantine.* Any dog or other animal which bites a person shall be quarantined by the town marshal for up to 15 days. During quarantine, the animal shall be securely confined in the dog pound at the owner's expense. At the discretion of the town marshal, the quarantine may be on the premises of the owner or other approved place.

(b) *Suspected rabies.* No person shall kill or cause to be killed any animal suspected of being rabid, unless such action is necessary to protect lives or property.

(c) *Rabies diagnosed.* If a veterinarian diagnoses rabies in an animal in quarantine, the animal shall be humanely killed and the head of such animal sent to a laboratory for pathological examination and confirmation of diagnosis. Nothing herein shall prevent disposition of a vicious dog, which does not have rabies.
(Prior Code, § 8.04.090; Ord. of 8-8-2007, § 5-3A-7)

Sec. 4-98. Female dogs.

Every person having under his control any female dog in heat (i.e., the menstrual period) shall confine such dog in a house, garage, or other building, and in such a manner as to eliminate the congregating of other dogs in the immediate vicinity of the female dog. Any such female dog not so confined is a public nuisance, and the owner or other person in control of such dog is guilty of maintaining a public nuisance, and is, therefore, guilty of a misdemeanor. The dog warden or any police officer may immediately abate every such nuisance by impounding such dog at the expense of the owner.
(Prior Code, § 8.04.100; Ord. of 8-8-2007, § 5-3A-8)

Sec. 4-99. Nuisance dogs.

(a) *Prohibited.* No owner shall keep a dog, whether running at large or not, which shall cause annoyance or disturbance by prolonged and repeated barking, howling or yelping, by chasing motor vehicles or human beings, or by repeatedly damaging or destroying the flowers, plants, lawn, shrubbery or trees of a neighborhood or of a citizen of the town either willfully or through willful neglect which shall cause any nuisance as defined in this article. Any owner keeping such a nuisance dog in violation of this section shall be punished as set forth in section 4-91.

(b) *Notice to owner.* Before any prosecution is brought under this section, however, the town marshal shall deliver a notice to the party creating a nuisance that unless such nuisance is abated within three days after receipt of such notice, a complaint will be filed against such person. After such three-day period, a complaint will be filed against such person. After such three-day period, a complaint may be filed for any further annoyance or disturbance caused by such nuisance.
(Prior Code, § 8.04.110; Ord. of 8-8-2007, § 5-3A-9)

Sec. 4-100. Vicious dogs.

Whenever an affidavit has been made before the town marshal or city judge of a "vicious dog," as defined in section 4-90, it shall be the duty of the town marshal and all enforcement officers of the town to issue a notice to appear and a complaint to the

owner of said dog. Upon investigation and at the discretion of the town marshal, said dog may be impounded at the owner's expense or ordered to be securely restrained upon the property of the owner until the owner's appearance before the city judge.
(Prior Code, § 8.04.120; Ord. of 8-8-2007, § 5-3A-10)

Chapter 5

RESERVED

Chapter 6

BUILDINGS AND BUILDING REGULATIONS*

Article I. In General

Secs. 6-1—6-18. Reserved.

Article II. Plumbing Code

***State law references**—State building code, MCA 50-60-201 et seq.; local building codes, MCA 50-60-301 et seq.

ARTICLE I. IN GENERAL

Secs. 6-1—6-18. Reserved.

ARTICLE II. PLUMBING CODE*

Sec. 6-19. Adopting code.

That certain technical plumbing code known and designated as the "Uniform Plumbing Code," adopted by the state plumbing board, now the state board of plumbers of the department of professional and occupational licensing, and the same is hereby adopted by this reference and incorporated herein to all intents and purposes as if the same were herein set forth word for word and figure for figure as the plumbing code of the town, and one copy heretofore is to be on file with the town clerk-treasurer and shall be permanently filed by said town clerk-treasurer and shall be open for study, inspection and reference by the public at all reasonable times.
(Prior Code, § 4.18.010; Ord. of 7-13-1987)

Sec. 6-20. Administrative authority.

The administrative authority of the town of and for said plumbing code is hereby created and shall be known and designated as the "plumbing inspector," and said plumbing inspector shall be appointed by the mayor with the advice and consent of the council and shall be compensated for services as may hereafter be fixed and determined by ordinance.
(Prior Code, § 4.18.020; Ord. of 7-13-1987)

Sec. 6-21. Penalty for violations.

Violations of any of the terms or provisions of such plumbing code are hereby prohibited and made unlawful and in addition to all other remedies available by law to the town for any violation of such code. Any person violating such code shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not exceeding $300.00, or by imprisonment not exceeding 90 days, or by both such fine and imprisonment.
(Prior Code, § 4.18.030; Ord. of 7-13-1987)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

***State law reference**—State plumbing code, MCA 50-60-501 et seq.

Chapter 7

RESERVED

Chapter 8

CEMETERIES

Article I. In General

Secs. 8-1—8-18. Reserved.

Article II. Town Cemetery

ARTICLE I. IN GENERAL

Secs. 8-1—8-18. Reserved.

ARTICLE II. TOWN CEMETERY

Sec. 8-19. Perpetual care fund for town cemetery; fees.

(a) *Creation of fund.* There is hereby created a fund known as the perpetual care fund for the care of the town cemetery. Any person purchasing one or more graves in said town cemetery shall pay a charge in the amount established by resolution and said grave shall thereafter be entitled to perpetual care at the expense of the town.

(b) *Duty of town clerk-treasurer.* The town clerk-treasurer shall deposit all funds received in said perpetual care fund in a savings account, time certificate deposit, or other investment authorized by law and the town council, and shall annually take the net earnings therefrom and deposit the same to the cemetery account.

(c) *Grave opening and closing fees.* There shall be a charge in the amount established by resolution for the opening and closing of each grave.

(d) *Duty of owner.* The owner or holder of any such grave in said town cemetery shall pay to the town clerk-treasurer annually, on or before July 15 of each calendar year, the sum established by resolution for the care of each grave for the period of July 1 to the following July 1 of each calendar year. Any owner or holder of any such empty grave who shall allow said annual care and maintenance charges to become delinquent for a period in excess of two years shall forfeit said graves to the town to be resold in accordance with the provisions of this article and such nonpayment shall be deemed to constitute such forfeiture. It is expressly understood that this section shall have no application to those persons who shall have paid into said perpetual care fund for specific graves in accordance with subsection (a) of this section.
(Prior Code, §§ 13.06.010—13.06.040)

Sec. 8-20. Cemetery hours.

The town cemetery is hereby declared open to the public during the hours from sunrise to one-half hour after sunset, and no person shall enter upon said cemetery premises during any other hours except in emergencies and except for authorized town

personnel. Every person convicted of a violation of this section shall be punished upon conviction by a fine of not less than $10.00 nor more than $100.00, or by imprisonment for not more than ten days, or by both such fine and imprisonment.
(Prior Code, §§ 13.04.010, 13.04.040)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 8-21. Regulations; dogs.

Except as provided in MCA 49-4-14, no person shall allow any dog to run at large upon said cemetery premises, and any dog found upon said cemetery premises shall be destroyed summarily, without notice, by town authorities. This provision shall not be construed to prevent persons from taking dogs upon said cemetery premises in their automobiles or motor vehicles provided that said dogs shall remain in said automobile or motor vehicle while such person or persons shall be on the cemetery premises. Every person convicted of a violation of this section shall be punished upon conviction by a fine of not less than $10.00 nor more than $100.00, or by imprisonment for not more than ten days, or by both such fine and imprisonment.
(Prior Code, §§ 13.04.020, 13.04.040)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Chapter 9

RESERVED

Chapter 10

CITY COURT*

*State law reference—City courts, MCA 3-11-101 et seq.

Sec. 10-1. Appointment of city judge.

The mayor, with the advice and consent of the council, shall appoint a city judge. A justice of the peace may be designated to act as city judge and shall serve in this capacity for the same period of time as his term as justice of the peace.

(Prior Code, § 2.21.010; Ord. of 2-10-1992)

State law reference—Term of city judge, MCA 3-11-201.

Sec. 10-2. Qualifications of city judge.

The city judge shall at the time of appointment be a resident and registered voter of the county and shall be either:

(1) An attorney-at-law authorized to practice law in the state; or

(2) A person who shall be on a probationary status until he has successfully completed the orientation course of study and meets state qualifications for city judge, or for a period of six months in which time candidate must at least have begun the necessary educational process.

(Prior Code, § 2.21.020; Ord. of 2-10-1992)

State law reference—City judge qualifications, MCA 3-11-202.

Sec. 10-3. Duties of the city judge.

The city judge shall establish regular sessions of court subject to its jurisdiction, collect all fines, costs, or forfeitures that accrue to the town from cases tried or disposed of in the city court, and deposit all monies with the town clerk-treasurer.

(Prior Code, § 2.21.030; Ord. of 2-10-1992)

Sec. 10-4. Expenses of training sessions.

All costs for the instruction necessary to the qualification for city judge shall be paid by the town.

(Prior Code, § 2.21.040; Ord. of 2-10-1992)

State law reference—Training session for judge, MCA 3-11-204.

Chapter 11

RESERVED

Chapter 12

COMMUNITY DEVELOPMENT

Article I. In General

Secs. 12-1—12-18. Reserved.

Article II. Urban Renewal Area

ARTICLE I. IN GENERAL

Secs. 12-1—12-18. Reserved.

ARTICLE II. URBAN RENEWAL AREA*

Sec. 12-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act means MCA title 7, chapter 15, parts 42 (MCA 7-15-4201 et seq.) and 43 (MCA 7-15-4301 et seq.).

Actual taxable value means the taxable value of taxable property at any time, as calculated from the assessment roll last equalized.

Base taxable value means the actual taxable value of all taxable property within an urban renewal area prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in MCA 7-15-4287 or 7-15-4293.

Incremental taxable value means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area.

Tax increment means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies which the urban renewal area or a part thereof is located, against the incremental taxable value.

Tax increment provision means a provision for the segregation and application of tax increments as authorized by MCA 7-15-4282—7-15-4299.

Taxes mean all taxes levied by a taxing body against property on an ad valorem basis.

Urban renewal area means a blighted area that the local town council designates as appropriate for an urban renewal project or projects.

Urban renewal district means an established urban renewal area.

Urban renewal plan means a plan for an urban renewal area/district adopted by the town council in accordance with the provisions of this article, and in conformance with the town growth policy, which describes potential projects or programs.

***State law reference**—Montana Urban Renewal Law, MCA 7-15-4201 et seq.

Urban renewal project or program means undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight, and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part of redevelopment, rehabilitation, or conservation in accordance with an urban renewal plan. An urban renewal project may not include using property that was condemned pursuant to MCA title 70, chapter 30 (MCA 70-30-101 et seq.), for anything other than a public use.

Whitehall Urban Renewal District means the urban renewal area/district established by this article, consisting of a continuous area within an accurately described boundary, zoned in accordance and planned in conformance with the town growth policy, and found to be a blighted area.

(Ord. No. 03-01-05, § 1, 12-12-2013)

State law reference—Definitions, MCA 7-15-4206.

Sec. 12-20. Findings.

Based on representations made to the town council to date, and taking into consideration all comments received, including those made at a public hearing duly held on October 15, 2013, after proper legal notice was given, the town council does hereby make the following findings, determinations and declarations regarding the Whitehall Urban Renewal District, which is hereinafter referred to as "the district":

(1) Following an analysis of conditions within the district, the town council directed that a statement of blight be prepared to present information about conditions within the district.

(2) A resolution of necessity adopted by the town council on June 12, 2012, found that the district was blighted in accordance with the Montana Urban Renewal Law, noting that at least three conditions of blight were present in the district per the Statement of Blight.

(3) The district includes all the real property in the town within an area that is generally bounded on the west by the town limit, on the east by the town limit at Whitetail Creek, on the north by Commercial Way to Division Street and thereafter by East 1st Street and on the south by Sugar Beet Row. The legal description and map of the district are attached to Ordinance No. 03-01-05, as Exhibit "B."

a. The property to be included in the district consists of a continuous area with an accurately described boundary.

b. The district includes more than 390 separate parcels, more than large enough to afford maximum opportunity, consistent with the sound needs of the town as a whole, for the rehabilitation or redevelopment of the urban renewal area by the private sector.

c. The property to be included in the district does not contain property included within an existing urban renewal area district or targeted economic development district.

(4) The town growth policy was adopted in December 2009 and amended in 2011.

(5) A plan for the district prepared in accordance with the Montana Urban Renewal Law, the "Whitehall Urban Renewal Plan," is attached to Ordinance No. 03-01-05 as Exhibit "C," which:

a. Describes the opportunity to foster economic vitality in the town through the redevelopment and revitalization of its downtown and surrounding areas.

b. Enhances opportunities for private investment in order to generate jobs and new taxable value for the community.

c. Addresses blight through investment in public infrastructure and programs that enhance the quality of life for the citizens.

d. Authorizes the use of tax increment financing in support of making rehabilitation and redevelopment improvements. As revenues permit, the town may issue tax increment financing bonds in support of these activities.

(6) The town urban renewal plan was submitted to the town planning board for review, and on May 28, 2013, said board executed a resolution that found the proposed urban renewal plan to be in conformity with the town growth policy and found the urban renewal area to be zoned for uses in accordance with the town growth policy.

(7) A notice of a public hearing in substantially the form presented in, and attached to Ordinance No. 03-01-05 as Exhibit "A" was published on October 2 and 9, 2013.

(8) A notice of a public hearing was mailed by certified mail to all property owners in the district based on a list of the geocodes for all real property, the assessor codes for all personal property, and a description of all centrally assessed property located within the TIFD at the time of its creation.

(Ord. No. 03-01-05, § 2, 12-12-2013)

State law reference—Resolution of necessity, MCA 7-15-2580.

Sec. 12-21. Establishment of the district.

The Whitehall Urban Renewal District is hereby established.
(Ord. No. 03-01-05, § 3, 12-12-2013)

Sec. 12-22. District plan.

The Whitehall Urban Renewal Plan, attached to Ordinance No. 03-01-05 as Exhibit "C," is hereby adopted.
(Ord. No. 03-01-05, § 4, 12-12-2013)

Sec. 12-23. Base year.

For the purpose of calculating the incremental taxable value for each year of the life of the district, the base taxable value shall be calculated as the taxable value of all real and personal property within the district, as of January 1, 2013.
(Ord. No. 03-01-05, § 5, 12-12-2013)

Sec. 12-24. Tax increment provision.

The county is hereby authorized to segregate, as received, the tax increment derived in the district, and use and deposit such increment into the district fund for use as authorized by the Act and as authorized herein or by the town council from time to time.
(Ord. No. 03-01-05, § 6, 12-12-2013)

Sec. 12-25. Costs that may be paid from tax increments.

The tax increments received from the district may be used to directly pay costs of approved urban renewal projects, or to pay debt service on bonds issued to finance urban renewal projects as defined under the Montana Urban Renewal Law, as may from time to time be approved by the town council. The town council hereby authorizes the use of tax increments in the district to be used to pay debt service on internal and bank financed loans issued to finance all or a portion of the costs of eligible improvements in compliance with the Montana Urban Renewal Law and subject to any limitations imposed by the state Constitution.
(Ord. No. 03-01-05, § 7, 12-12-2013)

Sec. 12-26. Term of the tax increment financing provision.

(a) The tax increment financing provision of the district will terminate in accordance with state law.

(b) After termination of the tax increment financing provision, all taxes shall continue to be levied upon the actual taxable value of the taxable property in the district, but shall be paid into funds of the taxing bodies levying taxes within the district.
(Ord. No. 03-01-05, § 8, 12-12-2013)

Sec. 12-27. Effect of urban renewal project or program.

The creation of an urban renewal project or program, or the approval of an urban renewal project or program, does not affect, abrogate or supersede any rules, ordinances, or regulations relating to zoning, building permits, or any other matters.
(Ord. No. 03-01-05, § 9, 12-12-2013)

Chapter 13

RESERVED

Chapter 14

ELECTIONS*

Article I. In General

Article II. Wards

***State law references**—Elections generally, MCA title 13; local election administration, MCA 13-1-301 et seq.; local government elections, MCA 13-1-402 et seq.

ARTICLE I. IN GENERAL

Sec. 14-1. Polling place for elections.

The voting or polling place for all town elections shall be at the office of the town clerk-treasurer, located at 2 North Whitehall Street, Whitehall, Montana, or such other place as may be designated by the town council.
(Prior Code, § 1-02-010; Ord. of 2-14-2008)

State law reference—Designation of polling places, MCA 13-3-105.

Secs. 14-2—14-20. Reserved.

ARTICLE II. WARDS*

Sec. 14-21. Dividing town into three wards.

The town is hereby divided into three wards for elections and other purposes, said wards to be known as Ward Number One, Ward Number Two, and Ward Number Three.
(Prior Code, § 2.04.010; Ord. of 5-10-1989)

Sec. 14-22. Ward Number One.

Ward Number One consists of all that part of said town within the corporate limits thereof which lies westerly of the following described line, to-wit: Beginning at a point where the north and south centerline of Whitehall Street in the Northern Pacific Addition to the townsite of Whitehall intersects the south boundary line of the corporate limits of said town; thence north along said line to a point where Whitehall Street intersects the east-west centerline of Second Street; thence westerly along said east-west centerline of Second Street to the north-south centerline of Brooke Street; thence in a northerly direction along said north-south centerline to the east-west centerline of Yellowstone Trail and west along said east-west centerline of said Yellowstone Trail to the west corporate limits of the town.
(Prior Code, § 2.04.020; Ord. of 5-10-1989)

Sec. 14-23. Ward Number Two.

Ward Number Two consists of all that part of said town within the corporate limits thereof which lies easterly of the east boundary line of said Ward Number One and westerly of the following described line, to-wit: Beginning at a point where the north

*State law reference—Wards, MCA 7-5-4401.

and south centerline of Jefferson Street, if the same were extended, it would intersect the south boundary line of the corporate limits of said town; thence north along said line to a point where it would intersect the east and west centerline of Second Street, as the same now actually exists in the Noble Wyeth Addition; thence west along said east-west centerline of Second Street, to a point where it would intersect the north-south centerline of Division Street, as the same now actually exists; thence north along said line to the east-west centerline of Yellowstone Trail; thence east along said centerline of Yellowstone Trail to the east boundary line of the corporate limits of the town, thereby also encompassing that area of the town lying north of Yellowstone Trail.
(Prior Code, § 2.04.030; Ord. of 5-10-1989)

Sec. 14-24. Ward Number Three.

Ward Number Three consists of all that part of said town within the corporate limits thereof which lies easterly and southerly of the east boundary line of said Ward Number Two and which is not included within either Ward Number One or Ward Number Two.
(Prior Code, § 2.04.040; Ord. of 5-10-1989)

Chapter 15

RESERVED

Chapter 16

EMERGENCY MANAGEMENT AND EMERGENCY SERVICES*

Article I. In General

Article II. Volunteer Ambulance Service

***State law reference**—Disaster and emergency services, MCA 10-3-101 et seq.

ARTICLE I. IN GENERAL

Sec. 16-1. Mutual aid agreements.

The town council may enter into mutual aid agreements with the proper authority of other incorporated municipalities, districts, unincorporated municipalities, state agencies which have emergency services, private fire-prevention agencies, federal agencies and emergency service areas. All agreements shall be approved not only by the mayor and town council but by the medical director, ambulance director and volunteers of the ambulance department.
(Prior Code, § 2.20.130)

Secs. 16-2—16-20. Reserved.

ARTICLE II. VOLUNTEER AMBULANCE SERVICE*

Sec. 16-21. Creating a volunteer ambulance department.

There is hereby created and established for the town a volunteer ambulance department which shall consist of an ambulance director and such assistants and members as may be authorized by the town council.
(Prior Code, § 2.61.010)

State law reference—Ambulance service authorized, MCA 7-34-101.

Sec. 16-22. Number of members.

Said ambulance department shall consist of not more than the number of members determined necessary by the medical director, ambulance director and the mayor. Members shall remain within a nine-minute response time when on call. Members should either work or reside in the town ambulance service area.
(Prior Code, § 2.61.020)

Sec. 16-23. Ambulance director.

The director and an assistant director (if an assistant shall be determined by the medical director, ambulance director, mayor or town council to be needed) shall have a minimum of three years of experience as an EMT-B (or higher) on the local ambulance department, and shall be nominated by the mayor, with consultation of the volunteer ambulance attendants, and approved by the members of the town council.
(Prior Code, § 2.61.030)

*State law reference—Local government ambulance service, MCA 7-34-101 et seq.

Sec. 16-24. Medical director.

The medical director shall be a state licensed physician with appropriate training and skill to carry out the duties as required by the state board of medical examiners. The medical director shall be nominated by the mayor, with consultation of the ambulance director, and approved by the town council.
(Prior Code, § 2.61.[0]31)

Sec. 16-25. Other officers.

The members of the department shall elect any other officers necessary for the efficient working of the ambulance department. As required by HIPPA and OSHA, privacy officer and exposure control officer positions will be appointed by the ambulance director.
(Prior Code, § 2.61.[0]32)

Sec. 16-26. Ambulance board.

The mayor shall nominate, with approval from the town council, a minimum of eight healthcare professionals within the ambulance service area. This board will be responsible for assisting the medical director and the ambulance director with budgets, equipment purchase recommendations, quality improvement and developing policies and procedures. Due to state and federal privacy laws concerning patients, the ambulance board may be asked to assist in disciplinary procedures/hearings and other delicate matters concerning patient care. The ambulance board shall meet at least once a year. The town ambulance volunteers shall elect one person for a position on the board. The ambulance director shall be an ex officio member of this board.
(Prior Code, § 2.61.[0]33)

Sec. 16-27. Rules and regulations.

Said department shall make such rules and regulations governing its body and organization as it shall deem fit; provided, however, the same shall in no way conflict with any of the rules or regulations adopted by the town council governing said department.
(Prior Code, § 2.61.040)

Sec. 16-28. Discipline of members.

The ambulance director shall be responsible for the discipline, good order and proper conduct of the officers and members constituting the department and for the condition of all apparatus and equipment, and disposables connected with said department; and

it shall be the director's duty to report to the medical director, mayor and/or council any known conditions prevailing within the ambulance service area that could affect the operations of the ambulance service.
(Prior Code, § 2.61.050)

Sec. 16-29. Orders of mayor.

The director shall be subject at all times to the proper orders of the mayor. However, the medical director shall have sole and absolute control over any matters concerning patient care.
(Prior Code, § 2.61.060)

Sec. 16-30. Monies pertaining to support of department.

All budgeted monies pertaining to the support of the department shall be handled by the town clerk-treasurer and paid out by the town clerk-treasurer only upon proper warrants issued as all other warrants properly drawn.
(Prior Code, § 2.61.070)

Sec. 16-31. Qualifications of volunteers.

All volunteers must meet minimum qualifications. All volunteers qualified to drive the ambulances shall have a valid state driver's license and shall have a professional CPR certification. All volunteers providing patient care shall either have a state EMT license, a state physician license, a state nursing license with the medical director signature, or be grandfathered in by the state to provide pre-hospital care.
(Prior Code, § 2.61.[0]80)

Sec. 16-32. Term of appointment of volunteers; probation period.

Each appointment shall be first made for a probationary term of six months, and thereafter the medical director shall recommend to the mayor which shall nominate and, with the consent of the town council, appoint who shall thereafter hold their respective appointments during good behavior and while they have the physical ability to perform their duties.
(Prior Code, § 2.61.100)

Sec. 16-33. Authority to suspend volunteers.

(a) The mayor may suspend the ambulance director, assistant, or any volunteer of the ambulance department for neglect of duty or a violation of any of the rules of the ambulance department.

(b) The medical director of the department may suspend the ambulance director of the department or any volunteer for like cause.

(c) The ambulance director may suspend the assistant ambulance director of the department or any volunteer for like cause.

(d) The assistant director of the department may suspend any volunteer for like cause.
(Prior Code, § 2.61.110)

Sec. 16-34. Suspension procedure.

(a) In all cases of suspension, the person suspended must be furnished with a copy of the charge against said person in writing, setting forth reasons for the suspension. Such charges must be presented at a hearing had thereon where the suspended member of the department may appear in person or by counsel and make defense to said charges.

(b) Should the charges not be presented within 45 days of the hearing, or should the charges be found not proved by the town, the suspended person shall be reinstated.

(c) If such charges are found proven by the town by a vote of the majority of the whole council, the town council may impose such penalty as it shall determine the offense warrants, either in the continuation of the suspension for a limited time, or in the removal of the suspended person from the department.
(Prior Code, § 2.61.120)

Chapter 17

RESERVED

Chapter 18

ENVIRONMENT AND NATURAL RESOURCES*

Article I. In General

Secs. 18-1—18-18. Reserved.

Article II. Street and Park Trees

Division 1. Generally

Secs. 18-31—18-48. Reserved.

Division 2. Tree Board

***State law reference**—Environmental protection, MCA title 75.

ARTICLE I. IN GENERAL

Secs. 18-1—18-18. Reserved.

ARTICLE II. STREET AND PARK TREES*

DIVISION 1. GENERALLY

Sec. 18-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Park trees mean trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the town, or to which the public has free access as a park.

Street trees mean trees, shrubs, bushes, and all other woody vegetation on land lying lines on either side of all streets, avenues, or ways within the town.
(Prior Code, § 7.10.010; Ord. of 12-14-1992)

Sec. 18-20. Penalty.

Any person violating any provision of this article shall be, upon conviction or a plea of guilty, subject to a fine not to exceed $50.00.
(Prior Code, § 7.10.190; Ord. of 12-14-1992)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 18-21. Spacing.

In future plantings, no street trees may be planted closer together than the following, except in special plantings designed or approved by the tree board:

(1) Small trees or shrubs: 20 feet.

(2) Medium trees: 40 feet.

(3) Large trees: 50 feet.
(Prior Code, § 7.10.070; Ord. of 12-14-1992)

*State law reference—Authority to provide for planting and protection of trees, MCA 7-16-4102.

Sec. 18-22. Distance from curb and sidewalk.

In future plantings, no street trees may be planted closer to any roadway than the following:

(1) Small trees: two feet.

(2) Medium trees: three feet.

(3) Large trees: four feet.

(Prior Code, § 7.10.080; Ord. of 12-14-1992)

Sec. 18-23. Distance from street corners and fireplugs.

No tree shall be planted closer than 20 feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No roadway tree shall be planted closer than within ten feet of any fireplug.

(Prior Code, § 7.10.090; Ord. of 12-14-1992)

Sec. 18-24. Utilities.

No trees may be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility.

(Prior Code, § 7.10.100; Ord. of 12-14-1992)

Sec. 18-25. Public tree care.

(a) The town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds. Prior to any of the above stated action, landowners most adjacent to the public way will be consulted on the proposed action. All effort will be made to arrive at a mutually agreeable plan of action. This section does not prohibit the planting of street trees by adjacent property owners provided that the location of said trees is in accordance with sections 18-21 through 18-24.

(b) The town tree board may remove or cause or order to be removed, any tree, or part thereof, which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is

affected with any injurious fungus, insect or other pest. The landowner will be informed of the proposed action at least 30 days prior to any action being taken unless an immediate safety hazard exists.
(Prior Code, § 7.10.110; Ord. of 12-14-1992)

Sec. 18-26. Tree topping.

(a) It shall be unlawful as a normal practice for any person, firm, or town department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

(b) Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this section at the determination of the town tree board.
(Prior Code, § 7.10.120; Ord. of 12-14-1992)

Sec. 18-27. Pruning; corner clearance.

Every owner of any tree overhanging any street or right-of-way within the town shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The town shall have the right to prune any tree or shrub on private property when it interferes with the property spread of light along the street from a street light or interferes with visibility of any traffic control device or sign.
(Prior Code, § 7.10.130; Ord. of 12-14-1992)

Sec. 18-28. Dead or diseased tree removal on private property.

The town shall have the right to cause the removal of any dead or diseased trees on private property within the town, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the town. The town tree board will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within 60 days after the date of service of the notice or, if an immediate safety hazard, less time may be required. In

the event of the failure of the owners to comply with such provisions, the town shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.
(Prior Code, § 7.10.140; Ord. of 12-14-1992)

Sec. 18-29. Removal of stumps.

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.
(Prior Code, § 7.10.150; Ord. of 12-14-1992)

Sec. 18-30. Arborists license and bond.

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating or removing street or park trees within the town without first applying for and procuring a business license. The license fee shall be as established by resolution and shall be paid annually in advance; provided, however, that no license shall be required of any public service company or town employee doing such work in the pursuit of his public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of $50,000.00 for bodily injury and $100,000.00 for property damage, indemnifying the town of any person injured or damaged resulting from the pursuit of such endeavors as herein described.
(Prior Code, § 7.10.170; Ord. of 12-14-1992)

Secs. 18-31—18-48. Reserved.

DIVISION 2. TREE BOARD

Sec. 18-49. Creation and establishment of town tree board.

There is hereby created and established a town tree board, which shall consist of five members, citizens, and residents of this town, who shall be appointed by the mayor with the approval of the council.
(Prior Code, § 7.10.020; Ord. of 12-14-1992)

Sec. 18-50. Term of office.

The term of the five persons to be appointed by the mayor shall be three years. In the event that a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term.
(Prior Code, § 7.10.030; Ord. of 12-14-1992)

Sec. 18-51. Compensation.

Members of the board shall serve without compensation.
(Prior Code, § 7.10.040; Ord. of 12-14-1992)

Sec. 18-52. Duties and responsibilities.

It shall be the responsibility of the board to study, investigate, counsel and develop and/or update, as needed, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented to the town council, and upon its acceptance and approval, shall constitute the official comprehensive tree plan for the town. The board, when requested by the town council, shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work.
(Prior Code, § 7.10.050; Ord. of 12-14-1992)

Sec. 18-53. Operation.

The board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.
(Prior Code, § 7.10.060; Ord. of 12-14-1992)

Sec. 18-54. Interference with town tree board.

It shall be unlawful for any person to prevent, delay or interfere with the town tree board, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any street trees, park trees, or trees on private grounds, as authorized in this article.
(Prior Code, § 7.10.160; Ord. of 12-14-1992)

Sec. 18-55. Review by town council.

The town council shall have the right to review the conduct, acts and decisions of the town tree board. Any person may appeal any ruling or order of the town tree board to the town council, who may hear the matter and make final decision.
(Prior Code, § 7.10.180; Ord. of 12-14-1992)

Chapter 19

RESERVED

Chapter 20

FIRE PREVENTION AND PROTECTION*

Article I. In General

Article II. Volunteer Fire Department

*State law reference—Fire protection, MCA 7-33-2001 et seq.

ARTICLE I. IN GENERAL

Sec. 20-1. Lawful orders of officer or firefighter.

Every person who, at the burning of any building, structure or other fire, disobeys the lawful orders of any public officer or firefighter, or offers any resistance to, or interferes with, the lawful efforts of any firefighter or any company of firefighters to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extinguished, or who forbids or prevents, or dissuades others from assisting to extinguish the same, shall be deemed guilty of a violation of this chapter.
(Prior Code, § 2.32.010)

Sec. 20-2. Fires and fire hazards.

It shall be unlawful for any person to build or cause to be built, within the corporate limits of this town and within a distance of 100 feet of any building, haystack or any body of combustible material, any bonfire.
(Prior Code, § 9-02-030; Ord. of 7-9-2008)

State law reference—Regulation of explosives, bonfires and other fire hazards, MCA 7-33-4205, 7-33-4206.

Secs. 20-3—20-22. Reserved.

ARTICLE II. VOLUNTEER FIRE DEPARTMENT*

Sec. 20-23. Creating a volunteer fire department.

There is hereby created and established for the town a volunteer fire department which shall consist of a fire chief and such assistants and members as may be authorized by the town council.
(Prior Code, § 2.20.010; Ord. of 2-10-1997)

State law reference—Authority to create fire department, MCA 7-33-4102.

Sec. 20-24. Number of members.

Said fire department shall consist of not more than 28 members who shall reside within the town or the Jefferson Valley Rural Fire District.
(Prior Code, § 2.20.020; Ord. of 2-10-1997)

*__State law reference__—Municipal fire departments, MCA 7-33-4101 et seq., 7-33-4201 et seq.

Sec. 20-25. Fire chief.

The fire chief and an assistant fire chief (if an assistant shall be determined by the town council to be needed) shall be nominated by the mayor and approved by the members of the town council. All other officers of the fire department shall be elected by the members of the fire department at an annual election to be held at their first meeting in January of each year.
(Prior Code, § 2.20.030; Ord. of 2-10-1997)

Sec. 20-26. Rules and regulations.

Said fire department shall make such rules and regulations governing its body and organization as it shall deem fit; provided, however, that the same shall in no way conflict with any of the rules or regulations adopted by the town council governing said fire department.
(Prior Code, § 2.20.040; Ord. of 2-10-1997)

Sec. 20-27. Discipline of members.

The fire chief shall be responsible for the discipline, good order and proper conduct of the officers and members constituting the fire department and for the condition of all apparatus connected with said department; and it shall be the fire chief's duty to report to the mayor any known conditions prevailing within the fire limits of the town (which shall be the same as the corporate limits) as shall be hazardous from the standpoint of fire danger.
(Prior Code, § 2.20.050; Ord. of 2-10-1997)

Sec. 20-28. Orders of mayor.

The fire chief shall be subject at all times to the proper orders of the mayor; and shall have sole and absolute control and command during conflagrations within the fire limits, and in exercising this authority shall have control not only of all members of the fire department, but of all other persons and property so far as the conducting and control of the same pertains to the regulation of the fire; subject, however, in such matters to the proper orders of the mayor.
(Prior Code, § 2.20.060; Ord. of 2-10-1997)

Sec. 20-29. Monies pertaining to support of department.

All budgeted monies pertaining to the support of the fire department shall be handled by the town clerk-treasurer and paid out by the town clerk-treasurer only upon proper warrants issued as all other warrants properly drawn.
(Prior Code, § 2.20.070; Ord. of 2-10-1997)

Sec. 20-30. Qualifications of firefighters.

The town determines that age is a valid, bona fide occupational qualification for the position of firefighter because of the rigorous physical demands and the expectation of many years of emergency service. The qualification of firefighters shall be that they have passed a pre-employment physical examination by a practicing physician duly authorized to practice in this state.
(Prior Code, § 2.20.080; Ord. of 2-10-1997)

Sec. 20-31. Physical examination.

The physical examination required by section 20-30 shall be in writing and filed with the town clerk-treasurer. Such examination shall disclose the ability of the applicant to perform the physical work usually required of firefighters in the performance of their duty.
(Prior Code, § 2.20.090; Ord. of 2-10-1997)

Sec. 20-32. Term of appointment of firefighters; probation period.

Each appointment shall be first made for a probationary term of six months, and thereafter the mayor shall nominate and, with the consent of the town council, appoint a fire chief (and assistant fire chief if deemed necessary by the town council), and firefighters who shall thereafter hold their respective appointments during good behavior and while they have the physical ability to perform their duties.
(Prior Code, § 2.20.100; Ord. of 2-10-1997)

Sec. 20-33. Authority to suspend firefighters.

(a) The mayor may suspend the fire chief, assistant fire chief, or any firefighter of the fire department for neglect of duty or a violation of any of the rules of the fire department.

(b) The fire chief of the fire department may suspend the assistant fire chief of the fire department or any firefighter for like cause.

(c) The assistant fire chief of the fire department may suspend any firefighter for a like cause.
(Prior Code, § 2.20.110; Ord. of 2-10-1997)

Sec. 20-34. Suspension procedure.

(a) In all cases of suspension, the person suspended must be furnished with a copy of the charge against said person in writing, setting forth reasons for the suspension. Such charges must be presented at the next meeting of the town council and a hearing had thereon where the suspended member of the fire department may appear in person or by counsel and make defense to said charges.

(b) Should the charges not be presented at the next meeting of the council after the suspension or should the charges be found not proved by the town council, the suspended person shall be reinstated.

(c) If such charges are found proven by the town council by a vote of the majority of the whole council, the town council may impose such penalty as it shall determine the offense warrants, either in the continuation of the suspension for a limited time, or in the removal of the suspended person from the fire department.
(Prior Code, § 2.20.120; Ord. of 2-10-1997)

Sec. 20-35. Mutual aid agreements.

The town council may enter into mutual aid agreements with the proper authority of other incorporated municipalities, fire districts, unincorporated municipalities, state agencies which have fire protection services, private fire-prevention agencies, federal agencies and fire service areas.
(Prior Code, § 2.20.130; Ord. of 2-10-1997)

Chapter 21

RESERVED

Chapter 22

FLOODS*

Article I. In General

Secs. 22-1—22-18. Reserved.

Article II. Flood Damage Prevention

Division 1. Generally

Secs. 22-34—22-54. Reserved.

Division 2. Administration and Enforcement

Secs. 22-65—22-86. Reserved.

Division 3. Standards for Flood Hazard Reduction

***State law reference**—Floodplain and floodway management, MCA 76-5-101 et seq.

ARTICLE I. IN GENERAL

Secs. 22-1—22-18. Reserved.

ARTICLE II. FLOOD DAMAGE PREVENTION*

DIVISION 1. GENERALLY

Sec. 22-19. Title.

These regulations shall be known and cited as the "Town of Whitehall Floodplain Ordinance." These regulations are in accordance with and exercising the authority of laws MCA 76-5-101—76-5-406 and the guidance of the Code of Federal Regulations administered by the Federal Emergency Management Agency (FEMA).
(Ord. of 8-22-2007, § 1.1)

Sec. 22-20. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory structure means a structure that is accessory to, or in addition to, any use that is permitted in these regulations (e.g., a picnic shelter would be accessory to a campground). An accessory structure is secondary to the primary use that is permitted and complies with all other conditions imposed by these regulations and otherwise provided for by law. Accessory structures are also referred to as appurtenant structures. An accessory structure is a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For example, a residential structure may have a detached garage or storage shed for garden tools as an accessory structure. Other examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds and similar buildings. NFIP regulations for new construction generally apply to new and substantially improved accessory structures.

Act means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 USC 4001—4128 and MCA 76-5-101—7-5-406.

Actuarial rates. See *Risk premium rates.*

*__State law reference__—Local floodplain land use regulations, MCA 7-5-301.

Administrator means the Federal Insurance Administrator.

Agency means the Federal Emergency Management Agency, Washington DC.

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appeal means a request for a review of the town floodplain administrator's interpretation of any provisions of these regulations or a request for a variance.

Applicant means a community which indicates a desire to participate in the program.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured, and the use of which is incidental to the use of the principal structure.

Area of future-conditions flood hazard means the land area that would be inundated by the one percent annual chance (100-year) flood based on future-conditions hydrology.

Area of shallow flooding means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year; also commonly referred to as the 100-year floodplain. The area may be designated as Zone A on the flood hazard boundary map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard."

Area of special flood-related erosion hazard means the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be

designated as Zone E on the FHBM. After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

Area of special mudslide (i.e., mudflow) hazard means the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

Artificial obstruction/development means any obstruction which is not natural and includes any dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, road, bridge, conduit, culvert, building, refuse, automobile body, fill or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year. A base flood may also be referred to as a 100-year flood. A 100-year flood has nearly a 23 percent chance of occurring in a 25-year period.

Base flood elevation (BFE) means the elevation above sea level of the base flood in relation to the North American Vertical Datum of 1988 (NAVD 88) unless otherwise specified in the flood insurance study. Previous FIRMs may have been published in the National Geodetic Vertical Datum of 1929 (NGVD 29).

Basement means any area of the building having its floor subgrade (below ground level) on all sides. A "walk-out" basement is not a basement in the National Flood Insurance Program (NFIP).

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building. See *Structure.*

Channel means the geographical area within either the natural or artificial banks of a watercourse or drainway.

Channelization project means the excavation and/or construction of an artificial channel for the purpose of diverting the entire flow of the stream from its established course.

Chargeable rates means the (insurance) rates established by the administrator pursuant to section 1308 of the Act for first layer limits of flood insurance on existing structures.

Chief executive officer of the community (CEO) means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

Coastal high hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Community means any state or area or political subdivision thereof, or any Indian tribe or authorized tribal organization or Alaska native village or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

Contents coverage means the insurance on personal property within an enclosed structure, including the cost of debris removal, and the reasonable cost of removal of contents to minimize damage. Personal property may be household goods usual or incidental to residential occupancy, or merchandise, furniture, fixtures, machinery, equipment and supplies usual to other than residential occupancies.

Crawlspace (in the NFIP) means the enclosed area below the BFE. To meet the FEMA definition of a crawlspace, an enclosed area must meet all of the following criteria:

(1) Interior grade is no more than two feet below the exterior lowest adjacent grade (LAG) and height of crawlspace foundation wall can be no greater than four feet.

(2) Openings; location/elevation, frequency, square area, automatic floodwater entry/exit design of opening cover. Crawlspaces that have their floors below BFE must have openings to allow the equalization of flood forces.

(3) Ductwork and building utilities must be above BFE or floodproofed.

Buildings that have below-grade crawlspaces will have higher flood insurance premiums than buildings that have the interior elevation of the crawlspace at or above the lowest adjacent exterior grade.

Criteria means the comprehensive criteria for land management and use for floodprone areas developed under 42 USC 4102 for the purposes set forth in part 60.

Critical facility means an activity or facility where even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, retirement facilities, nursing homes, fire stations, police stations, storage of critical records and similar facilities.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Curvilinear line means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas, and consists of a curved or contour line that follows the topography.

Date of construction means the date that the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date.

Deductible means the fixed amount or percentage of any loss covered by insurance which is borne by the insured prior to the insurer's liability.

Designated floodplain means a floodplain whose limits have been designated and established by order of the state department of natural resources and conservation.

Designated floodway means a floodway whose limits have been designated and established by order of the state department of natural resources and conservation.

Developed area means an area of a community that is:

(1) A primarily urbanized, built-up area that is a minimum of 20 contiguous acres, has basic urban infrastructure, including roads, utilities, communications and public facilities, to sustain industrial, residential and commercial activities, and:

   a. Within which 75 percent or more of the parcels, tracts, or lots contain commercial, industrial, or residential structures or uses;

   b. Is a single parcel, tract, or lot in which 75 percent of the area contains existing commercial or industrial structures or uses; or

   c. Is a subdivision developed at a density of at least two residential structures per acre, within which 75 percent or more of the lots contain existing residential structures at the time the designation is adopted.

(2) Undeveloped parcels, tracts, or lots, the combination of which is less than 20 acres and contiguous on at least three sides to areas meeting the criteria of subsection (1) of this definition at the time the designation is adopted.

(3) A subdivision that is a minimum of 20 contiguous acres that has obtained all necessary government approvals, provided that the actual start of construction of structures has occurred on at least ten percent of the lots or remaining lots of a subdivision or ten percent of the maximum building coverage or remaining building coverage allowed for a single lot subdivision at the time the designation is adopted and construction of structures is underway. Residential subdivisions must meet the density criteria in subsection (1)c of this definition.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. A community without a FIRM or FHBM must require a permit for all proposed construction or other development in the community, so that it can determine whether the construction or other development is proposed within a floodprone area. Once a FIRM or FHBM has been issued for the community, it must require permits within the designated special flood hazard area (SFHA).

Director means the director of the Federal Emergency Management Agency.

Doublewide manufactured (mobile) home means that, when assembled as a nonmovable, permanent building, is at least 16 feet wide and has an area within its perimeter walls of at least 600 square feet.

Drainway means any depression two feet or more below the surrounding land serving to give direction to a current of water less than nine months of the year, and having a bed and well-defined banks.

Dwelling means a permanent building for human habitation, a place for living purposes. For flood insurance rating, a building designed for use as a residence for no more than four families or a single-family unit in a building under a condominium form of ownership.

Elevated building means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Eligible community or *participating community* means a community for which the administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

Emergency flood insurance program or *emergency program* means the program as implemented on an emergency basis in accordance with section 1336 of the Act. An emergency program is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

Enclosure means that portion of an elevated building below the lowest elevated floor that is either partially or fully shut in by rigid walls.

Erosion means the process of the gradual wearing away of land masses. This peril is not per se covered under the National Flood Insurance Program.

Establish means to construct, place, insert, or excavate.

Exception means a waiver from the provisions of part 60 directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

Existing construction means, for the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. The term "existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Existing structures. See *Existing construction.*

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal agency means any department, agency, corporation, or other entity or instrumentality of the executive branch of the federal government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

FEMA (The Federal Emergency Management Agency) means the agency that manages compliance with the National Flood Insurance Program (NFIP) and provides flood hazard studies and maps.

Finished (habitable) area means an enclosed area having more than 20 linear feet of finished walls (paneling, etc.) or used for any purpose other than solely for parking of vehicles, building access, or storage.

FIRM means the flood insurance rate map published by FEMA. See also *Flood insurance rate map.*

Flood or *flooding* means:

(1) A general and temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of inland or tidal waters.

b. The unusual and rapid accumulation or runoff of surface waters from any source.

c. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subsection (1)b of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (1)a of this definition.

Flood elevation determination means a determination by the administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood fringe means the portion of the floodplain outside the limits of the floodway.

Flood hazard boundary map (FHBM) means an official map of a community, issued by the administrator, where the boundaries of the flood, mudslide (i.e., mudflow) and related erosion areas having special hazards have been designated as Zones A, M, and/or E.

Flood insurance means the insurance coverage provided under the National Flood Insurance Program.

Flood insurance rate map (FIRM) means an official map of a community, on which the administrator has delineated both the special hazard areas and the risk premium zones applicable to the community; the map on which FEMA has delineated the 100-year floodplain, the base flood elevations (BFEs) and the risk premium zones.

Flood insurance study (see *Flood elevation study).* The term "flood insurance study" means the report in which FEMA has provided flood profiles, as well as the flood boundary/floodway map and the water surface profiles.

Flood protection system means those physical structural works for which funds have been authorized, appropriated and expended, and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Flood-related erosion means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels, or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Flood-related erosion area or *flood-related erosion prone area* means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

Flood-related erosion area management means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including, but not limited to, emergency preparedness plans, flood-related erosion control works and floodplain management regulations.

Floodplain or *floodprone area* means any land area susceptible to being inundated by water from any source (see *Flood* or *flooding*). The floodplain consists of a floodway and a flood fringe.

Floodplain development permit means a permit that is required before construction or development begins within any special flood hazard area (SFHA).

(1) If FEMA has not defined the SFHA within a community, the community shall require permits for all proposed construction or other development in the community, including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within floodprone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and the community's floodplain management ordinance.

(2) The community must also review all proposed developments to ensure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term "floodplain management regulations" describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, HVAC systems, structures and their contents.

Floodway. See *Regulatory floodway.*

Floodway encroachment lines means the lines marking the limits of floodways on federal, state and local floodplain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term "functionally dependent use" includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Future-conditions flood hazard area or *future-conditions floodplain.* See *Area of future-conditions flood hazard.*

Future-conditions hydrology means the flood discharges associated with projected land use conditions based on a community's zoning maps and/or comprehensive land use plans, and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway, such as bridge and culvert construction, fill and excavation.

Grandfathering means an exemption based on circumstances previously existing. Under the NFIP, buildings located in emergency program communities and pre-FIRM buildings in the regular program are eligible for subsidized flood insurance rates. Post-FIRM buildings in the regular program built in compliance with the floodplain management regulations in effect at the start of construction will continue to have favorable rate treatment even though higher base flood elevations or more restrictive, greater risk zone designations result from FIRM revisions.

Highest adjacent grade (HAG) means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

a. By an approved state program as determined by the Secretary of the Interior; or

b. Directly by the Secretary of the Interior in states without approved programs.

HVAC means heating, ventilating and air conditioning.

Hydraulics means the depth of water (elevation) in a drainageway, watercourse, river or stream channel.

Hydrology means the discharge in cubic feet per second (CFS) of water in a drainageway, watercourse, river or stream channel.

Independent scientific body means a nonfederal technical or scientific organization involved in the study of land use planning, floodplain management, hydrology, geology, geography or any other related field of study concerned with flooding.

Insurance adjustment organization means any organization or person engaged in the business of adjusting loss claims arising under the standard flood insurance policy.

Insurance company or *insurer* means any person or organization authorized to engage in the insurance business under the laws of any state.

Letter of map amendment (LOMA) means an amendment to the currently effective FEMA map which establishes that a property is not located in a special flood hazard area. A LOMA is issued only by FEMA. A LOMA is an official amendment, by letter, to an effective NFIP map. A LOMA establishes a property's location in relation to the special flood hazard area (SFHA). LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation.

Letter of map change (LOMC) means a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. LOMCs include letter of map amendment (LOMA), letter of map revision (LOMR), and letter of map revision based on fill (LOMR-F).

Letter of map revision (LOMR) means an official amendment to the currently effective FEMA map. A LOMR is issued by FEMA and changes flood zones, delineations and elevations.

Letter of map revision based on fill (LOMR-F) means FEMA's modification of the special flood hazard area (SFHA) shown on the flood insurance rate map (FIRM) based on the placement of fill outside the existing regulatory floodway. All requests for changes to effective maps, other than those initiated by FEMA, must be made in writing through the chief executive officer (CEO) of the community or an official designated by the CEO.

Levee means a manmade structure; usually an earthen embankment designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 44 CFR 65.10.

Levee system means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest adjacent grade (LAG) is required on the elevation certificate showing the elevation of the lowest grade adjacent to an existing or proposed development for flood insurance purposes.

Lowest floor means:

(1) The lowest floor of the lowest enclosed area (including a basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of requirements. Communities are required to obtain the elevation of the lowest floor (including basement) of all new and substantially improved structures. All new and substantially improved structures must have the lowest floor elevated to or above the base flood elevation (BFE). Nonresidential buildings may be floodproofed below the BFE.

(2) The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of section 60.3.

Lowest floor elevation (LFE) means the measured distance of a building's lowest floor above the National Geodetic Vertical Datum (NGVD) or other datum specified on the FIRM for that location.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Map means the flood hazard boundary map (FHBM) or the flood insurance rate map (FIRM) for a community issued by the agency.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's flood insurance rate map are referenced.

MTDEQ means the Montana Department of Environmental Quality.

MTDNRC (Montana Department of Natural Resources and Conservation) means the department responsible for the comprehensive program for the delineation of designated floodplains and designated floodways for each watercourse and drainageway in the state.

Mudslide (i.e., mudflow) means a condition where there is a river, flow or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover, and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

Mudslide (i.e., mudflow) area management means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including, but not limited to, emergency preparedness plans, mudslide control works and floodplain management regulations.

Mudslide (i.e., mudflow) prone area means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.

National Flood Insurance Program (NFIP) means 44 CFR chapter I, parts 59—79. The NFIP is a federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for state and community floodplain management regulations that reduce future flood damages. Participation in the NFIP is based on an agreement between communities and the federal government. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, the federal government will make flood insurance available within the community as a financial protection against flood losses. This insurance is designed to provide an insurance alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods.

NAVD 88 means the North American Vertical Datum of 1988; the official vertical datum for the United States.

New construction means, for the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, the term "new construction" means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. Structures include new "stick built," manufactured homes, mobile homes, or "moved onto site" structures

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

NGVD 29 means the National Geodetic Vertical Datum of 1929; formerly the official vertical datum for the United States; has been replaced with NAVD 88.

Official floodplain maps means the flood insurance rate maps (FIRMs) and flood boundary/floodway maps adopted and provided by FEMA and/or the MTDNRC for the 100-year flood. See *Base flood.*

Participating community, also known as an eligible community, means a community in which the administrator has authorized the sale of flood insurance.

Person means any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

Policy means the standard flood insurance policy.

Post-FIRM building means a building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial flood insurance rate map (FIRM), whichever is later.

Pre-FIRM building means a building for which construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of an initial flood insurance rate map (FIRM).

Premium means the total premium payable by the insured for the coverage provided under the policy. The calculation of the premium may be based upon either chargeable rates or risk premium rates, or a combination of both.

Principally above ground means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

Program means the National Flood Insurance Program authorized by 42 USC 4001—4128.

Program deficiency means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the standards in section 60.3, 60.system (including design, land acquisition, construction, fees, overhead, and profits), unless the federal insurance administrator determines a given cost not to be a part of such project cost.

Proper openings or enclosures (applicable to Zones A, A1-A30, AE, AO, AH, AR, and AR Dual). All enclosures below the lowest elevated floor must be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. A minimum of two openings, with positioning on at least two walls, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, must be provided. The bottom of all openings must be no higher than one foot above grade.

Reasonably safe from flooding. The community must review all permit applications to determine whether the proposed building sites will be reasonably safe from flooding as one of the minimum NFIP floodplain management requirements established by NFIP regulations. If the community determines that a site is not reasonably safe from flooding, it must require mitigation actions be undertaken to reduce the structures'

flood damage potential. When an individual applies for a letter of map revision based on fill (LOMR-F), the community will be required to determine that the filled area is reasonably safe from flooding before the LOMR-F will be issued. As indicated in the LOMR-F requirement, the term "reasonably safe from flooding" means base floodwaters will not inundate the land or damage structures to be removed from the SFHA, and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

Recreational vehicle means a vehicle which is:

(1) Built on a single chassis;

(2) 400 square feet or less when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

A recreational vehicle (travel trailer) may be considered a structure (building) only if it is without wheels, built on a chassis and affixed to a permanent foundation, and regulated under the community's floodplain management and building ordinances or laws.

Regular program means the program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRMs effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage, and such coverage is offered only after the administrator has completed a risk study for the community.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Remedy a violation means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implement-

ing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

Residential condominium building means a building, owned and administered as a condominium, containing one or more family units, and in which at least 75 percent of the floor area is residential.

Residential structure types mean:

Nonresidential includes, but is not limited to, small business concerns, churches, schools, farm buildings (including grain bins and silos), poolhouses, clubhouses, recreational buildings, mercantile structures, agricultural and industrial structures, warehouses, hotels and motels with normal room rentals for less than a six-month duration, and nursing homes.

Other residential includes hotels or motels where the normal occupancy of a guest is six months or more; a tourist home or roominghouse which has more than four roomers; a residential building (excluding hotels and motels with normal room rentals for less than a six-month duration) containing more than four dwelling units. Incidental occupancies such as office, professional private school, or studio occupancy are permitted if the total area of such incidental occupancies is limited to less than 25 percent of the total floor area within the building.

Single-family residence means a residential single-family dwelling; incidental office, professional, private school, or studio occupancies, including a small service operation, are permitted if such incidental occupancies are limited to less than 50 percent of the building's total floor area.

Two-to-four-family residence means a residential building (excluding hotels and motels with normal room rentals for less than a six-month duration) containing no more than four dwelling units. Incidental occupancies such as office, professional, private school, or studio space are permitted if the total area of such occupancies is limited to less than 25 percent of the total floor area within the building.

Riprap means stone, rocks, concrete blocks, or analogous material that is placed along the banks or bed of a stream to alleviate erosion.

Risk premium rates mean those rates established by the administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with section 1307 of the Act and the accepted actuarial principles. Risk premium rates include provisions for operating costs and allowances.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Scientifically incorrect means the methodology and/or assumptions which have been utilized are inappropriate for the physical processes being evaluated or are otherwise erroneous.

Section 1316 means the section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that FEMA finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in floodprone areas.

Setback means the amount of distance between the stream bank of the river or stream and the proposed use, where the stream bank is the 100-year flood boundary.

Sheet flow area. See *Area of shallow flooding.*

Sheet flow hazard means a type of flood hazard with flooding depths of one to three feet that occurs in areas of sloping land. The sheet flow hazard is represented by the zone designation AO on the FIRM.

Single structure (single building) means a building that is separated from other structures by intervening clear spell or solid, vertical, load-bearing division walls.

Solid perimeter foundation walls means walls that are used as a means of elevating a building in A zones and that must contain sufficient openings to allow for the unimpeded flow of floodwaters more than one foot deep.

Special flood hazard area. See *Area of special flood hazard.*

Special hazard area means an area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)) includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work

beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State coordinating agency means the agency of the state government or other office, designated by the governor of the state or by state statute at the request of the administrator, to assist in the implementation of the National Flood Insurance Program in that state.

Structure means a walled and roofed building, manufactured home, a gas or liquid storage tank, bridge, culvert, dam, diversion, wall, revetment, dike, or other projection that may impede, retard, or alter the pattern of flow of water, except that:

(1) For floodplain management purposes, the term "structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

(2) For insurance purposes, the term "structure" means:

a. A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

b. A manufactured home (the term "manufactured home," also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

(3) For insurance purposes, the term "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle (except as described in subsection (2) of this definition), or a gas or liquid storage tank.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. The term "substantial improvement" includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term "substantial improvement" does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or

(2) Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

Suitable fill means fill material which is stable, compacted, well-graded, pervious and generally unaffected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or other organic material, and is fitting for the purpose of supporting the intended use and/or permanent structure.

Technically incorrect means the methodology utilized has been erroneously applied due to mathematical or measurement error, changed physical conditions, or insufficient quantity or quality of input data.

Travel trailer. See *Recreational vehicle.*

Unfinished area means an enclosed area that is used only for the parking of vehicles, building access, or storage purposes and that does not meet the definition of a finished (habitable) area. Drywall used for fire protection is permitted in unfinished areas.

Utilities. If a proposed building site is in a special flood hazard area (SFHA), the building support utility systems for all new construction and substantial improvements shall:

(1) Be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(2) Require within floodprone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of floodwaters into the systems;

(3) Require within floodprone areas that new and replacement sewage systems are designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters; and

(4) Require on-site water disposal systems be located to avoid impairment to them or contamination from them during flooding.

If a subdivision proposal or other proposed new development is in a floodprone area, any such proposals shall be reviewed to ensure that all public utilities and facilities, such as sewer, gas, electrical and water systems, are located and constructed to minimize or eliminate flooding.

Variance means a grant of relief by a community from the terms of a floodplain management regulation.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
(Ord. of 8-22-2007, ch. 2, art. 2)

Sec. 22-21. Findings of fact.

(a) The flood hazard areas of the town are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.
(Ord. of 8-22-2007, § 1.2)

Sec. 22-22. Statement of purpose.

It is the purpose of this article to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and

(7) Ensure that potential buyers are notified that property is in a flood area.

(Ord. of 8-22-2007, § 1.3)

Sec. 22-23. Methods of reducing flood losses.

In order to accomplish its purposes, this article uses the following methods:

(1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

(4) Control filling, grading, dredging and other development which may increase flood damage;

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Ord. of 8-22-2007, § 1.4)

Sec. 22-24. Intent.

This article is provided in order to comply with MCA title 76, chapter 5 (MCA 76-5-101 et seq.) and to ensure compliance with the requirements for the continued participation by the town in the National Flood Insurance Program. Land use regulations which are hereby adopted are to be applied to all identified 100-year floodplains within the local jurisdiction.
(Ord. of 8-22-2007, § 1.5)

Sec. 22-25. Statutory authority.

Municipalities have authority to adopt ordinances as provided for in MCA 7-1-4123 to promote the general public health and welfare. Other authority for municipalities and counties to adopt floodplain management regulations appears in MCA 76-5-101—76-5-406.
(Ord. of 8-22-2007, § 1.6)

Sec. 22-26. Jurisdictional area.

These provisions shall apply to all areas of special flood hazard within the jurisdiction of the town.
(Ord. of 8-22-2007, § 3.1)

Sec. 22-27. Compliance.

No land use shall be developed, and no structure shall be located, extended, converted, or structurally altered within the 100-year floodplain without full compliance with the provisions of these regulations and other applicable regulations. These regulations meet the minimum requirements as set forth by the state board of natural resources and conservation, and the National Flood Insurance Program.
(Ord. of 8-22-2007, § 3.4)

Sec. 22-28. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard are identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled The Flood Insurance Study for the Town of Whitehall, dated September 10, 2007, with the most effective flood insurance rate maps and/or flood boundary floodway maps (FIRM and/or FBFM) dated September 10, 2007. Permits are required for all proposed construction and other development within special flood hazard areas.
(Ord. of 8-22-2007, § 3.2)

Sec. 22-29. Rules for interpretation of floodplain boundaries.

The boundaries of the 100-year floodplain shall be determined by scaling distances on the flood insurance rate map (FIRM) and, when available, using the floodway data table contained in the flood insurance study report. The maps may be used as a guide for determining the 100-year floodplain boundary, but the exact location of the floodplain boundary shall be determined where the base flood elevation intersects the natural ground. For unnumbered A zone and AO zone floodplains, where there is a conflict between a mapped floodplain boundary and actual field conditions, the floodplain administrator may interpret the location of the 100-year floodplain boundary based on field conditions or available historical flood information. Where the surveyed elevation provides greater elevation information than the floodplain map and indicates that the land/structure may be determined to be out of the floodplain, the homeowner/landowner needs to advise the floodplain administrator and may submit a letter of map change (LOMC) to FEMA.
(Ord. of 8-22-2007, § 3.3)

Sec. 22-30. Abrogation and greater responsibility.

It is not intended by these regulations to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or underlying zoning. However, where these regulations impose greater restrictions, the provision of these regulations shall prevail.
(Ord. of 8-22-2007, § 3.5)

Sec. 22-31. Interpretation.

In the interpretation and application of this article, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally-construed in favor of the town council; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. of 8-22-2007, § 3.6)

Sec. 22-32. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or

flood damages. This article shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.
(Ord. of 8-22-2007, § 3.7)

Sec. 22-33. Disclosure provision.

All property owners or realtors and developers representing property owners in a FEMA defined 100-year floodplain or floodway must notify potential buyers and/or their agents that such property is located within the floodplain or floodway and is subject to regulation. Information regarding floodplain areas or the repository for floodplain maps is available in the floodplain administrator's office.
(Ord. of 8-22-2007, § 3.9)

Secs. 22-34—22-54. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 22-55. Floodplain administrator.

The town clerk-treasurer is hereby appointed by the town council as the floodplain administrator to administer and implement the provisions of this article and other appropriate sections of 44 CFR (Emergency Management and Assistance—National Flood Insurance Program regulations) pertaining to floodplain management.
(Ord. of 8-22-2007, § 4.1)

Sec. 22-56. Duties and responsibilities of the floodplain administrator.

Duties and responsibilities of the floodplain administrator shall include, but not be limited to, the following:

(1) Maintain and hold open for public inspection all records pertaining to the provisions of this article. Where BFE data are utilized in Zone A, obtain and maintain records of the lowest floor and floodproofing elevations for new and substantially improved construction.

(2) Review permit applications to ensure that proposed building site projects, including the placement of manufactured homes, will be reasonably safe from flooding.

(3) Review floodplain permits for proposed development to ensure that the applicant has acquired all necessary permits from those federal, state or local

governmental agencies (including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334) from which prior approval is required. It is the responsibility of the applicant to determine and obtain the other necessary permits. Successful acquisition of permits from other departments or agencies does not guarantee approval of the floodplain development permit.

(4) For administration of the community NFIP, where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the floodplain administrator shall make the necessary interpretation. When flood insurance is required by lending institutions, the property owner may submit a LOMC if they believe their property was inadvertently shown in the SFHA due to map scale. It is only the FEMA determination that removes a structure or property from the SFHA designation.

(5) Notify, in riverine situations, adjacent communities and the state coordinating agency, which is the state department of natural resources and conservation, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(6) Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(7) When base flood elevation data has not been provided in accordance with section 22-28, the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of division 3 of this article. Where BFE data are utilized in Zone A, obtain and maintain records of the lowest floor and floodproofing elevations for new and substantially improved construction.

(8) When manmade changes occur within a FEMA defined SFHA, the floodplain administrator shall ensure the floodplain development permit applicant has assigned funds to submit the technical information in a letter of map revision (LOMR) upon completion of the project. The floodplain administrator shall review and acknowledge the LOMR form (MT-2), only after ensuring the completed project is compliant with the program.

(9) When a regulatory floodway has not been designated, the floodplain administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and

AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half of a foot at any point, or significantly increases the base flood velocity, within the community.

(10) Under the provisions of 44 CFR chapter 1, part 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, and AH on the community's FIRM which increases the water surface elevation of the base flood by more than one-half of a foot, provided that the community first completes all of the provisions required by section 65.12.

(11) Additional Factors. Floodplain development permits shall be granted or denied by the floodplain administrator on the basis of whether the proposed establishment, development, alteration, or substantial improvement of an artificial obstruction meets the requirements of these regulations. Additional factors that shall be considered for every permit application are:

a. The danger to life and property due to increased flood heights, increased floodwater velocities, backwater or alterations in the pattern of flood flow caused by the obstruction or encroachment;

b. The danger that the obstruction or encroachment may be swept onto other lands or downstream to the injury of others;

c. The ability of the proposed water supply and/or sanitation system to prevent disease, contamination and unsanitary conditions;

d. The susceptibility of the proposed facility and its contents to flood damage, and the effects of such damage on the individual owner;

e. The construction or alteration of the obstruction or encroachment in such a manner as to lessen the flooding danger;

f. The importance of the services provided by the facility to the community;

g. The requirement of the facility for a waterfront location;

h. The availability of alternative locations not subject to flooding for the proposed use;

i. The compatibility of the proposed use with existing development and anticipated development in the foreseeable future;

j. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area;

k. The safety of access to property in times of flooding for ordinary and emergency services;

l. The request for fill for a residential or commercial building is not followed by a request for a basement for the same residential or commercial building, which would put the finished floor of the building below the BFE, which would negate the purpose of the fill;

m. The proposed use shall comply with the existing zoning designation;

n. For projects involving bank stabilization, channelization, levees, floodwalls and/or diversions, off property impacts including increased flood peaks, flood stage, flood velocity, erosion and sedimentation, should be considered and found to be nonexistent, neutral or able to be mitigated; and

o. Such other factors as are in harmony with the purposes of these regulations, the Montana Floodplain and Floodway Management Act, and the National Flood Insurance Program.

(12) A floodplain development permit application shall be approved or denied by the floodplain administrator. If the application is deemed incomplete, the floodplain administrator will notify the applicant of deficiencies within 60 days. Under no circumstances should it be assumed that the permit is automatically granted. All approved applications will be signed by the floodplain administrator. Denied applications may be resubmitted if additional information is provided to support a change in development.

(13) The floodplain administrator may deem an application incomplete based on, but not limited to, the following criteria: elevation or floodproofing certificates, and a level survey and/or hydraulic and hydrology calculations by a registered land surveyor, engineer, or licensed architect to assess the impact of the volume of water, and determine the base flood elevation, water velocities, and ground elevations.

(14) Upon receipt of a complete application for a permit, the floodplain administrator shall prepare a notice containing the facts pertinent to the application and shall publish the notice at least once in a newspaper of general circulation in the area. Notice shall also be served by first class mail upon adjacent property owners. The state floodplain NFIP coordinator located in the DNRC and other

permitting agencies shall also receive notice by the most efficient method. The notice shall provide a reasonable period of time, not less than 15 days, for interested parties to submit comments on the proposed activity.

(15) Critical facilities. These facilities should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a floodplain if at all possible. If a critical facility must be located in a floodplain it should be provided a higher level of protection so that it can continue to function and provide services after the flood. Under Executive Order 11988, Floodplain Management, federal agencies funding and/or permitting critical facilities are required to avoid the 0.2 percent (500-year) floodplain or protect the facilities to the 0.2 percent chance flood level.

(Ord. of 8-22-2007, § 4.2)

Sec. 22-57. Authority to enter and investigate lands or waters.

(a) The floodplain administrator may make reasonable entry upon any lands and waters in the town for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. The floodplain administrator shall provide notice of entry by mail, electronic mail, phone call, personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered. If none of these persons can be found, the floodplain administrator shall affix a copy of the notice to one or more conspicuous places on the property for five days. If the owners do not respond, cannot be located or refuse entry to the floodplain administrator, the floodplain administrator may only enter the property through a search warrant.

(b) An investigation of a natural or artificial obstruction or nonconforming use shall be made by the floodplain administrator, either on his own initiative, or at the request of titleholders of land abutting the watercourse or drain way involved, or on the written request of the town council or permitting agency.

(Ord. of 8-22-2007, § 3.10)

Sec. 22-58. Permit procedures.

(a) Application for a floodplain development permit shall be presented to the floodplain administrator on forms furnished by him and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and

elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

(1) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;

(2) Elevation (in relation to mean sea level) to which any nonresidential structure shall be floodproofed;

(3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of section 22-90(b)(4);

(4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;

(5) Maintain a record of all such information in accordance with section 22-56(1).

(b) Approval or denial of a floodplain development permit by the floodplain administrator shall be based on all of the provisions of this article and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage;

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(3) The danger that materials may be swept onto other lands to the injury of others;

(4) The compatibility of the proposed use with existing and anticipated development;

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(6) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

(7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(8) The necessity to the facility of a waterfront location, where applicable;

(9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(Ord. of 8-22-2007, § 4.3)

Sec. 22-59. Emergency waiver.

(a) Emergency repair and replacement of severely damaged public transportation facilities, public water and sewer facilities, and flood control works may be authorized by the floodplain administrator if:

(1) Upon notification and prior to the emergency repair and/or replacement, the floodplain administrator determines that an emergency condition exists warranting immediate action; and

(2) The floodplain administrator agrees upon the nature and type of proposed emergency repair and/or replacement.

(b) Authorization to undertake emergency repair and replacement work may be given verbally if the floodplain administrator feels that such a written authorization would unduly delay the emergency work. Such verbal authorization must be followed by a written permit describing the emergency condition, the type of emergency work agreed upon, and stating that a verbal authorization had been previously given.
(Ord. of 8-22-2007, § 4.4)

Sec. 22-60. Appeals and variances.

(a) There is hereby created a local floodplain management board of adjustment, the membership, administration, and rules of procedure of which are identical to a zoning board of adjustment.

(b) The board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this article.

(c) Any person aggrieved by the decision of the appeal board may appeal such decision in the courts of competent jurisdiction.

(d) The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(e) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in section 22-58(b) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(f) Upon consideration of the factors noted above and the intent of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article (section 22-22).

(g) Variances shall not be issued within any designated floodway if any increase in flood levels or velocities, during the base flood discharge, would result.

(h) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.

(i) Prerequisites for granting variances.

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon:

a. Showing a good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws or ordinances;

d. The proposed use is adequately floodproofed; and

e. Reasonable alternative locations outside the designated floodplain are not available.

(3) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. It should be noted that variances of this type place the community in violation of the NFIP, and therefore will be carefully considered.

(j) Variances may be issued by a community for new construction and substantial improvements, and for other development necessary for the conduct of a functionally dependent use, provided that:

(1) The criteria outlined in this article are met; and

(2) The structure or other development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.

(k) Appeals of any decision of the floodplain administrator or the town council may be taken by an aggrieved person, jointly or separately, to a court of record.
(Ord. of 8-22-2007, § 4.5)

Sec. 22-61. Fees.

A nonrefundable processing fee in the amount established by resolution shall be submitted with each permit and/or variance application. This fee will cover the administrative cost of processing the permit and/or variance, providing public notice and performing sufficient field inspections to ensure compliance with these regulations.
(Ord. of 8-22-2007, § 4.6)

Sec. 22-62. Violation notice.

The floodplain administrator shall bring any violation of these regulations to the attention of the town council; its legal counsel; and the state department of natural resources and conservation.
(Ord. of 8-22-2007, § 4.7)

Sec. 22-63. Compliance.

Any use, alteration, or construction not in compliance with that authorized shall be deemed a violation of these regulations and punishable as provided in section 22-64 or enforced as provided in MCA 76-5-109. An applicant may be required to submit certification by a registered professional engineer, architect, or other qualified person designated by the floodplain administrator, that finished fill, building floor elevations, floodproofing, hydraulic design, or other flood protection measures will be accomplished in compliance with these regulations.
(Ord. of 8-22-2007, § 4.8)

Sec. 22-64. Penalties.

Violation of the provisions of these regulations, or failure to comply with any of the requirements, including failure to obtain permit approval prior to development on the floodplain, shall constitute a misdemeanor. Any person who violates these regulations or fails to comply with any of its requirements (including the conditions and safeguards

established in variances) shall, upon conviction thereof, be fined not more than $100.00, or be imprisoned for not more than ten days, or both. Each day's continuance of a violation shall be deemed a separate and distinct offense.
(Ord. of 8-22-2007, § 4.9)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Secs. 22-65—22-86. Reserved.

DIVISION 3. STANDARDS FOR FLOOD HAZARD REDUCTION

Sec. 22-87. Application.

The minimum floodplain development standards listed in this division and title 76, chapter 5, MCA, apply to all of the floodplains referenced on the flood insurance rate maps.
(Ord. of 8-22-2007, § 5.1)

Sec. 22-88. General standards.

In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

(1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into floodwaters; and

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. of 8-22-2007, § 5.2)

Sec. 22-89. Floodway.

(a) *Uses allowed without permit.* The following open space uses shall be allowed without a permit anywhere within the floodway, provided that such uses are not prohibited by any other resolution or statute, do not require structures other than portable structures, do not require alteration of the floodplain such as fill, excavation or permanent storage of materials or equipment, do not require large scale cleaning of the riparian vegetation within 50 feet of the mean high water mark, and will not cause flood losses on other land or to the public:

(1) Agricultural uses such as tilling, farming, irrigation, harvesting, grazing, etc.;

(2) Accessory uses such as loading and parking areas, or emergency landing strips associated with industrial or commercial facilities;

(3) Private and public recreational uses such as picnic grounds, swimming areas, parks, trap shooting, skeet shooting, target shooting, and archery ranges, wildlife management and natural areas, hunting and fishing areas, or hiking and horseback riding trails;

(4) Forestry, including processing of forest products with portable equipment;

(5) Residential uses such as lawns, gardens, parking areas and play areas;

(6) Irrigation and livestock supply wells, provided that they are located at least 500 feet from domestic water supply wells;

(7) Fences, except permanent fences crossing channels;

(8) Recreational vehicle use provided that they are on the site for fewer than 180 consecutive days or are fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system with wheels intact, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(b) *Uses requiring permits.* The following nonconforming uses and artificial obstructions may be permitted within the designated floodway, provided that such uses conform to the provisions of section 22-60(j)(1) and are approved for permit issuance by the floodplain administrator:

(1) Excavation of material from pits or pools provided that:

a. A buffer strip of undisturbed land of sufficient width to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the excavation;

b. The excavation meets all applicable laws and regulations of other local and state agencies; and

c. Excavated material is stockpiled outside the designated floodway. (However, for short term gravel mining operations, the floodplain administrator may allow stockpiling in the flood fringe if there is no other alternative and there is no significant (one-half foot) rise in the BFE. A no rise certification signed by a licensed engineer shall be required.).

(2) Railroad, highway and street stream crossings, provided that:

a. The crossings are designed to offer minimal obstructions to the flood flow;

b. The bottom of bridge spans shall have a freeboard of at least two feet above the BFE to pass ice flows, the 100-year flood discharge and any debris associated with the discharge;

c. If possible, normal overflow channels are preserved to allow passage of sediments to prevent aggradations;

d. Midstream supports for bridges, if necessary, must have footings buried below the maximum scour depth; and

e. Stream crossings shall not increase the elevation of the 100-year flood more than one-half foot nor cause a significant increase in flood velocities. The applicant shall provide a no rise certification signed by a registered professional engineer.

(3) Limited filling for highway, street and railroad embankments not associated with stream crossings and bridges, provided that:

a. Reasonable alternate transportation routes outside the designated floodway are not available;

b. The encroachment is located as far from the stream channel as possible;

c. Measures are provided to mitigate the impact to property owners and the natural stream function; and

d. The encroachment shall not result in a cumulative increase exceeding one-half foot in base flood elevation, after the allowable encroachment into the floodway. A no rise certification signed by a registered professional engineer shall be provided by the applicant.

(4) Buried or suspended utility transmission lines, provided that:

a. Suspended utility transmission lines are designed such that the lowest point of the suspended line is at least six feet higher than the elevation of the flood of 100 year frequency;

b. Towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows;

c. When technically feasible, the crossing will not disturb the bed and banks of the stream and alternatives such as alternative routes, directional drilling and aerial crossings are considered; and

d. Utility transmission lines carrying toxic or flammable materials are buried to a depth of at least twice the calculated maximum depth of scour for a flood of 100 year frequency. The maximum depth of scour may be determined from any of the accepted hydraulic engineering methods, but the final calculated figures shall be subject to approval by the floodplain administrator.

(5) Storage of materials and equipment, provided that:

a. The material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; and

b. The material or equipment is readily removable within the limited time available after flood warning. Storage of flammable, toxic or explosive materials shall not be permitted.

(6) Irrigation, livestock and domestic water supply wells, provided that:

a. They are driven or drilled wells located on ground higher than surrounding ground to ensure positive drainage from the well;

b. They require no other structures (e.g., a well house);

c. Well casings are watertight to a distance of at least 25 feet below the ground surface;

d. Water supply and electrical lines have a watertight seal where the lines enter the casing;

e. All pumps and electrical lines and equipment are either of the submersible type or are adequately floodproofed;

f. Check valves are installed on main water lines at wells and at all building entry locations; and

g. Irrigation and livestock supply wells are located at least 500 feet from domestic water supply wells.

(7) Only those wastewater disposal systems that meet the requirements and separation distances under ARM 17.36.101-116 and ARM 17.36.301-345 are allowed.

(8) Fences crossing channels.

(9) Residential uses not requiring buildings such as lawns, gardens, parking areas and play areas.

(10) Public or private recreational uses not requiring structures such as campgrounds, golf courses, driving ranges, archery ranges, wildlife management and natural areas, alternative livestock ranches (game farms), fish hatcheries and shooting preserves, provided that:

a. Access roads require only limited fill and do not obstruct or divert floodwaters;

b. There are no dwellings or permanent mobile homes;

c. There is no rise in the BFE;

d. Off property impacts have been considered and found to be nonexistent, neutral or can be mitigated;

e. There is no large-scale clearing of riparian vegetation within 50 feet of the mean annual high water mark; and

f. Recreational vehicles and travel trailers are licensed and ready for highway use. Recreational vehicles and travel trailers are ready for highway use if on wheels or a jacking system with wheels intact, are attached to the site with only quick disconnect type utilities and securing devices, and have no permanently attached additions.

(11) Structures accessory to the uses permitted in this section, such as boat docks, loading and parking areas, marinas, emergency airstrips, permanent fences crossing channels, picnic shelters and tables, provided that:

a. The structures are not intended for human habitation or supportive of human habitation;

b. The structures will have low flood damage potential as certified by a registered professional engineer on a no rise certificate;

c. The structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the channel as possible;

d. Only those wastewater disposal systems that meet the requirements and separation distances under ARM 17.36.101-116 and ARM 17.36.301-345 are allowed;

e. Service facilities within these structures such as electrical, heating and plumbing are floodproofed in accordance with division 4 of this article;

f. The structure will be constructed and placed so as to offer a minimal obstruction to flood flows and is firmly anchored to prevent flotation;

g. The use does not require fill and/or substantial excavation; and

h. The use does not require the large scale clearing of riparian vegetation within 50 feet of the mean annual high water mark.

(12) Replacement of manufactured homes in an existing manufactured home park, sites outside of a park or subdivision, or subdivision on a developed site of the same dimensions with servicing utilities. (Previous home could have been destroyed by fire, flood, etc.) The replacement home must be elevated on a permanent foundation so the lowest floor is two feet above the base flood elevation. The foundation must be reinforced concrete, reinforced mortared block, reinforced piers, or other foundation elements of equal strength. The mobile home chassis must be securely anchored to the foundation system so that it will resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to:

a. Over-the-top ties to ground anchors are provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations for mobile homes less than 50 feet long;

b. Frame ties to ground anchors are provided at each corner of the home with five additional ties per side at intermediate points, for mobile homes more than 50 feet long;

c. All components of the anchoring system are capable of carrying a force of 4,800 pounds;

d. Any additions to the mobile home must be similarly anchored; and

e. Adequate surface drainage and access for a hauler are provided.

(13) Agricultural structures (except buildings, dwellings and fuel storage) that will have low flood damage potential, or be located on higher ground and as far from the channel as possible, and meet the floodproofing requirements of division 4 of this article.

(14) New surface water diversions and changes in place of diversions for agricultural uses and other uses, with certification by a registered engineer if:

a. The proper permits or documentation have been obtained from the DNRC water rights bureau for new surface water diversions and changes in place of diversion;

b. The proposed diversion or change in place of diversion will not increase the upstream elevation of the base flood one-half foot or more, or to the detriment of a neighboring property;

c. The proposed diversion is designed and constructed to minimize potential erosion from a base flood;

d. For a permanent diversion structure crossing the full width of the stream channel:

1. All other options should be studied and considered first;

2. The structure is designed and constructed to withstand up to a base flood; and

3. The diversion is not an obstruction to the passage of watercraft or fish.

(15) The following flood control measures certified by a registered professional engineer to comply with the conditions set forth (structural flood control works often significantly obstruct and affect floodway flow capacity):

a. Levees and floodwalls (new, reconstruction and/or maintenance) if:

1. The proposed levee or floodwall is designed and constructed to safely convey a 100-year flood;

2. The cumulative effect of the levee or floodwall combined with allowable flood fringe encroachments does not increase the unobstructed base flood elevation more than one-half foot. The floodplain admin-

istrator may establish either a lower or higher permissible increase in the base flood elevation for individual levee projects only with concurrence from the state department of natural resources and conservation and the Federal Emergency Management Agency based upon consideration of the following criteria:

(i) The estimated cumulative effect of any anticipated future permissible uses; and

(ii) The type and amount of existing development in the affected area;

3. The proposed levee or floodwall, except those to protect agricultural land, is constructed at least three feet higher than the base flood elevation; and

4. For levee structures to be recognized on a FEMA map as providing flood protection, the structure must meet the criteria outlined in 44 CFR 65.10. Without the criteria being met, the area behind the uncertified structure will be shown to be in the floodplain of the flood source (river).

b. Bank stabilization projects, such as hand-placed riprap, native revetments, weirs, barbs, etc., if:

1. It is designed to withstand a 100-year flood;

2. It does not increase the base flood elevation;

3. It will not increase erosion upstream, downstream, or adjacent to the site;

4. Consideration will be given to accommodate the safe passage of watercraft in low flows; and/or

5. It is preventive maintenance for bridge abutments, roads, industrial uses and public infrastructure.

c. Channelization projects if they do not significantly increase the magnitude, velocity, or base flood elevation in the proximity of the project.

d. Dams, provided that:

1. They are designed and constructed in accordance with the Montana Dam Safety Act and applicable safety standards; and

2. They will not increase flood hazards downstream either through operational procedures or improper hydrologic/hydraulic design.

(16) All other artificial obstructions, substantial improvements, or nonconforming uses not specifically listed in, or prohibited by, these regulations.

(c) *Prohibited uses.* The following artificial obstructions and nonconforming uses are prohibited within the floodway:

(1) A building, dwelling or structure for living purposes, place of assembly or permanent use by human beings.

(2) New construction of any residential dwelling, commercial building, or industrial building.

(3) Encroachments including fill, new construction, buildings, substantial improvements, excavations and other development that would cause water to be diverted from the established floodway, erode the embankment, obstruct the natural flow of waters, reduce the carrying capacity of the floodway, or increase flood levels within the community during the occurrence of the 100-year flood.

(4) The construction or permanent storage of an object subject to flotation or movement during the 100-year flood.

(5) Mobile homes and manufactured homes.

(6) Storage and disposal of solid waste, hazardous waste, or toxic, flammable, or explosive materials.

(7) Only those wastewater disposal systems that meet the requirements and separation distances under ARM 17.36.101-116 and ARM 17.36.301-345 are allowed.

(8) Cemeteries, mausoleums, or any other places of burial of human remains.
(Ord. of 8-22-2007, § 5.3)

Sec. 22-90. Flood fringe.

(a) *Uses allowed without permits.* All uses allowed in the floodway without permit according to the provisions of these regulations, shall also be allowed without a permit in the flood fringe.

(b) *Uses requiring permits.* All uses allowed in the floodway subject to the issuance of a permit according to the provisions of these regulations shall also be allowed by permit within the designated flood fringe. In addition, new construction, substantial improve-

ments, alterations to structures (including, but not limited to, residential, commercial, agricultural and industrial), and suitable fill shall be allowed subject to the following conditions:

(1) Such structures or fill must not be prohibited by any other statute, regulation, ordinance, or resolution.

(2) Such structures or fill must be compatible with local comprehensive plans, if any.

(3) Residential. The new construction, alterations and substantial improvements of residential dwellings, including manufactured homes, must be constructed on suitable fill with a permanent foundation such that the lowest floor elevation (including basement) is two feet or more above the BFE (base flood elevation). The suitable fill shall be at an elevation no lower than the elevation of the 100-year flood and shall extend for at least 15 feet, at that elevation, beyond the dwelling in all directions. Replacement manufactured and mobile homes in an existing mobile home park or subdivision may, instead of using suitable fill, be elevated on a concrete or mortared block foundation, or other suitable permanent foundation, and anchored to prevent flotation or downstream movement.

(4) Nonresidential. The new construction, alteration, and substantial improvement of commercial and industrial buildings must be constructed on suitable fill with a permanent foundation such that the lowest floor elevation (including basement) is two or more feet above the BFE (base flood elevation), or the building must be adequately floodproofed to an elevation no lower than two feet above the elevation of the 100-year flood. Certification is required by registered professional engineer, architect, or other qualified person that floodproofing methods are adequate to withstand the flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, buoyancy, and uplift forces associated with the 100-year flood.

a. If the building is designed to allow internal flooding of the lowest floor, use of the lowest floor must be limited to parking, loading areas and storage of equipment or materials not appreciably affected by floodwaters. The floors and walls shall be designed and constructed of materials resistant to flooding to an elevation no lower than two feet above the BFE. Walls shall be designed to equalize hydrostatic forces by allowing for entry and exit of floodwaters. Openings may be equipped with screens, louvers, valves, and other coverings or devices which permit the automatic entry and exit of floodwaters.

b. Buildings whose lowest floors are used for a purpose other than parking, loading, or storage of materials resistant to flooding shall be waterproofed to an elevation no lower than two feet above the BFE. Floodproofing shall include impermeable membranes or materials for floors and walls and watertight enclosures for all windows, doors and other openings. These buildings shall be designed to withstand the hydrostatic pressures and hydrodynamic forces resulting from the base flood.

c. Floodproofing of electrical, heating and plumbing systems shall be accomplished in accordance with division 4 of this article.

(5) All manufactured homes placed in the flood fringe shall be installed using methods and practices which minimize flood damage and must have the chassis securely anchored to a foundation system that will resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces. The following conditions also apply:

a. When a manufactured home is:

1. Altered;
2. Replaced because of substantial damage as a result of a flood; or
3. Replaced on an individual site;

the lowest floor must be elevated two feet above the base flood elevation. The home can be elevated on fill or raised on a permanent foundation of reinforced concrete, reinforced mortared block, reinforced piers, or other foundation elements of at least equivalent strength.

b. Replacement or substantial improvement of manufactured homes in an existing manufactured home park, a site outside a manufactured home park or subdivision, or subdivision must be raised on a permanent foundation. The lowest floor must be two feet above the base flood elevation. The foundation must consist of reinforced concrete, reinforced mortared block, reinforced piers, or other foundation elements of at least equivalent strength.

c. Manufactured homes proposed for use as commercial or industrial buildings must be elevated and anchored, rather than floodproofed.

(6) Fill material placed in the flood fringe must be stable, compacted, well graded, pervious, generally unaffected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or other organic material and appropriate for the purpose of supporting the intended use and/or permanent structure.

(7) Roads, streets, highways and rail lines shall be designed to minimize any increase in flood heights. Where failure or interruption of transportation facilities would result in danger to the public health or safety, the facility shall be located two feet above the elevation of the 100-year flood.

(8) Agricultural buildings that have a low damage potential, such as sheds, barns, shelters, and hay or grain storage structures, must be adequately anchored to prevent flotation or collapse and all electrical facilities shall be placed two feet above the base flood elevation.

(9) Recreational vehicles must meet the following requirements:

a. Be on the site for fewer than 180 consecutive days;

b. Be fully licensed and ready for highway use; or

c. Meet the permit requirements of this article, and the elevation and anchoring requirements for "manufactured homes" in subsection (b)(5) of this section. A recreational vehicle is ready for highway use if it is on its wheels or a jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(10) Off property impacts are considered and found to be nonexistent or neutral.

(11) Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:

a. A minimum of two openings on separate walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(12) Proposed development shall not have a large scale clearing of riparian vegetation within 50 feet of the mean annual high water mark.

(c) *Prohibited uses.* The following artificial obstructions and nonconforming uses are prohibited within the flood fringe:

(1) Only those wastewater disposal systems that meet the requirements and separation distances under ARM 17.36.101-116 and ARM 17.36.301-345 are allowed;

(2) Storage and disposal of solid waste, hazardous waste, toxic, flammable, or explosive materials; and

(3) Cemeteries, mausoleums, or any other places of burial of human remains.

(Ord. of 8-22-2007, § 5.4)

Sec. 22-91. Standards for subdivision proposals.

(a) Review subdivision proposals and other development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision or other development proposal is in a floodprone area, ensure that such proposals minimize flood damage.

(b) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or five acres, whichever is lesser, if not otherwise provided pursuant to section 22-28 or 22-56(7).

(c) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(d) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(Ord. of 8-22-2007, § 5.5)

Secs. 22-92—22-110. Reserved.

DIVISION 4. FLOODPROOFING REQUIREMENTS

Sec. 22-111. Certification.

If the following floodproofing requirements are to be utilized for a particular structure in accordance with these regulations, the methods used must be certified as adequate by a registered professional engineer, architect, or other qualified person.

(Ord. of 8-22-2007, § 6.1)

Sec. 22-112. Conformance.

Permitted floodproofing systems shall conform to the conditions listed below and the floodproofing standards listed in section 22-89(b)(4) of these regulations for commercial and industrial buildings:

(1) *Electrical systems.*

a. All incoming power service equipment, including all metering equipment, control centers, transformers, distribution and lighting panels, and all other stationary equipment must be located at least two feet above the elevation of the 100-year flood.

b. Portable and movable electrical equipment may be placed below the elevation of the 100-year flood, provided that the equipment can be disconnected by a single plug and socket assembly of the submersible type.

c. The main power service lines shall automatically operate electrical disconnect equipment of manually operated electrical disconnect equipment located at an accessible remote location outside the designated floodplain and above the elevation of the 100-year flood.

d. All electrical wiring systems installed below the elevation of the 100-year flood shall be suitable for continuous submergence and may not contain fibrous components.

(2) *Heating systems.*

a. Float operated automatic control valves must be installed in gas furnace supply lines so that fuel supply is automatically shut off when floodwaters reach the floor level where the furnace is located.

b. Manually operated gate valves must be installed in gas supply lines. The gate valves must be operable from a location above the elevation of the 100-year flood.

c. Electric heating systems must be installed in accordance with the provisions of subsection (1) of this section.

(3) *Plumbing systems.*

a. Sewer lines, except those to be buried and in sealed vaults, must have check valves installed to prevent sewage backup into permitted structures.

b. All toilets, stools, sinks, urinals, and drains must be located so the lowest point of possible entry is at least two feet above the 100-year flood elevation.

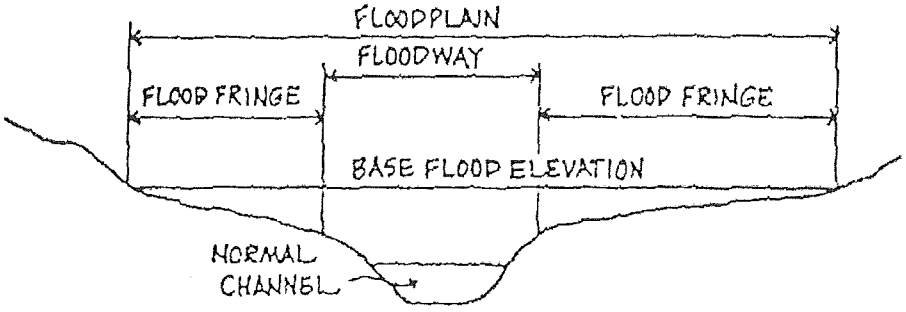
(Ord. of 8-22-2007, § 6.2)

Secs. 22-113—22-137. Reserved.

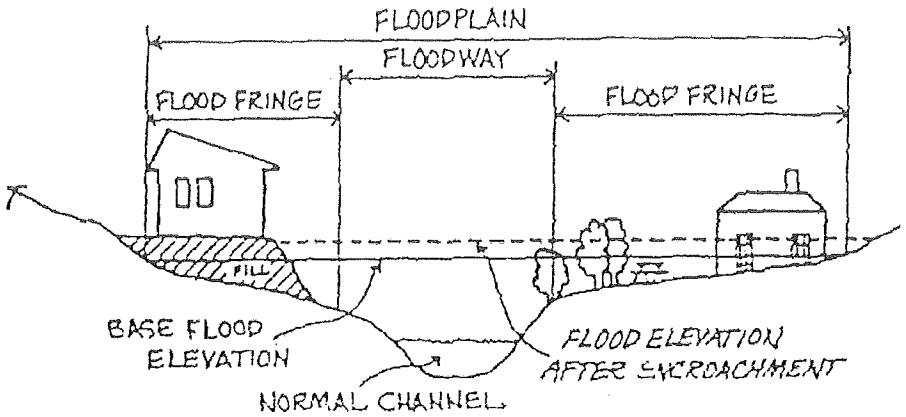
DIVISION 5. FIGURES

Sec. 22-138. Sketches of floodplain zones.

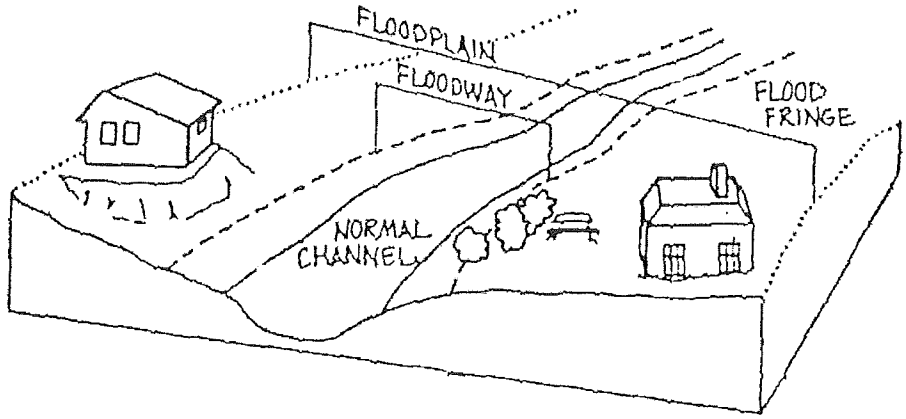
CROSS-SECTIONAL VIEW
NO DEVELOPMENT

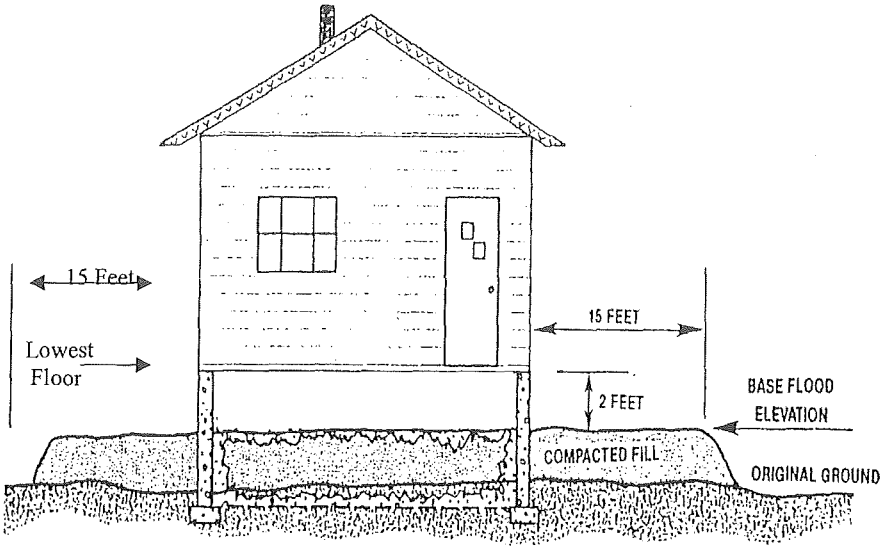


CROSS-SECTIONAL VIEW
WITH EXISTING & NEW DEVELOPMENT



PERSPECTIVE VIEW





(Ord. of 8-22-2007, app. A)

Chapter 23

RESERVED

Chapter 24

LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS*

Article I. In General

Article II. Business Licenses

Article III. Retail Beer and Wine Sales

Division 1. Generally

***State law references**—Business licensing, MCA 7-21-4101 et seq.; municipal regulation of business and commodities, MCA 7-42-4291 et seq.

ARTICLE I. IN GENERAL

Sec. 24-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building contractor means a person, firm or corporation who, in the pursuit of any independent business, undertakes to do a specific piece of work for other persons, using his own means and methods and who renders service in the course of an independent occupation representing the will of his employer only as to the result of his work and not as a means by which it is accomplished. The term "building contractor" includes all building trades such as, but not limited to, general, carpenters, electrical, plumbing, roofing, mechanical, sheet-metal and excavating contractors.

Business means employment, occupation, profession, pursuit or commercial activity engaged in for profit or public benefit.

Business establishment means all structures used for sale or production of goods or services for profit.

Coin-operated games means any pinball game, video game, or other game designed to be displayed where the public may play the game on depositing a coin, coins, or tokens into the machine.

Game arcade means any place where coin-operated games are displayed for use by the public, whether or not another business is conducted on the premises.

Home industries means a trade, occupation or profession for profit in the confines of a residential dwelling provided it is a secondary use of the dwelling and employs only family members. There shall be no outward signs or display of the profession.

Manufacturing means the process of making goods, by machinery or by other method; the production of articles for use from raw or prepared materials by giving such material new forms, qualities, properties, or combinations.

Nonprofit organizations means any groups which are religious, charitable, social, educational, recreational, or scientific which do not contemplate the distribution of pecuniary gains, profit or dividends to the members thereof and that pecuniary profit is not the object of the groups.

Transportation firms means transportation for hire, while engaged in interurban or intercity transporting of persons, freight, commodities, or any other type of goods or refuse.

Utilities means utility services falling within the following listed categories: electric power, natural gas, telephone and any other public utility not otherwise classified in this chapter, which is regulated by the public service commission.

Vehicle means every device in, upon or by which persons or property are or may be transported upon a public way.

Video game means a game using computer technology and a type of video display.

Video game arcade means any place where four or more video games or coin-operated games of any kind are displayed for use by the public, whether or not another business is conducted on the same premises.
(Prior Code, § 5-01-030)

Sec. 24-2. Purpose.

This chapter is adopted as an exercise of the general police powers of the town for the promotion of health, sanitation, traffic control, building use, fire protection and general welfare of the community, to finance the regulation of those business activities authorized by MCA title 7.
(Prior Code, § 5-01-020)

Secs. 24-3—24-22. Reserved.

ARTICLE II. BUSINESS LICENSES*

Sec. 24-23. Required.

Pursuant to the provisions of MCA title 7, chapter 21, parts 41 (MCA 7-21-4101 et seq.) and 42 (MCA 7-21-4201 et seq.), no person, business establishment, firm, association, or corporation shall conduct, operate, transact, engage in, or carry on any industry, trade, pursuit, profession, vocation, or business within the town without first applying for and obtaining a license therefor from the town as herein provided.
(Prior Code, § 5-02-010)

*State law reference—Business licensing, MCA 7-21-4101 et seq.

Sec. 24-24. Fees; exceptions.

(a) *License.* The license to be issued shall be issued by the town clerk-treasurer.

(b) *Fee.* The town clerk-treasurer shall collect the license fee as required by this article upon making of the application thereto.

(c) *Exceptions.* The following enterprises shall be excepted from licensing:

(1) Any enterprise carried out by the town, county, state, or federal governments.

(2) Wholesalers and freight companies who deliver and sell merchandise on a regular basis solely to business establishments in the town.

(Prior Code, § 5-02-020)

Sec. 24-25. Application.

Application for licenses shall be obtained from and filed with the town clerk-treasurer. All applications, when filed, shall be accompanied by the necessary fees and shall be signed by the applicant. The form of the application shall be determined by the town clerk-treasurer, but shall contain the following statement:

"I hereby agree that a business license issued is subject to all of the terms and conditions of the Whitehall Town Code, town and county planning commission, zoning ordinances, and other applicable ordinances, and that I am bound by said terms and conditions, and that this license is not transferable, except that the applicant may transfer the license to a different business site upon submittal of proper notification to the Town of Whitehall."

(Prior Code, § 5-02-030)

Sec. 24-26. Separate license required.

Except as otherwise provided, no license issued by the town clerk-treasurer shall cover more than one classification or more than one trade, pursuit, business, occupation, vocation, or entertainment.

(Prior Code, § 5-02-040)

Sec. 24-27. Allocation of fees.

All fees collected under this article shall be deposited by the town clerk-treasurer in the all-purpose general fund and used to support the various departments, divisions and activities of the town charged with providing the special services required, and for the administration of this article.

(Prior Code, § 5-02-060)

Sec. 24-28. Issuance.

Upon successful application, the town clerk-treasurer shall cause the license application to be placed on the next town council agenda. Upon approval by the council, the town clerk-treasurer shall issue said business license. If the town council, at its discretion, decides that it is in the best interests of the town to deny said business, the town clerk-treasurer shall refund applicable fees previously paid in advance.
(Prior Code, § 5-02-070)

Sec. 24-29. Term of license.

(a) *License year.* Except where otherwise specifically provided in connection with a business, the license year shall run from January 1 until December 31 of the same year. No person may continue to operate a business after the expiration of the license unless an application has been made for a new license and a new license has been issued.

(b) *Renewal.*

(1) *Filing deadline.* All applications and renewals for an annual license, as required herein, shall be filed with the town clerk-treasurer not later than February 1 of each year.

(2) *Declared delinquent.* Those applications filed after February 1 are hereby declared delinquent and subject to a delinquent charge as provided in section 24-44. Applications postmarked by 12:00 midnight of February 1 shall not be declared delinquent.

(3) *Exception.* This subsection (b) shall not apply to those applications filed for a half-year license as provided in subsection (c) of this section.

(c) *After June 30.* An applicant meeting all other requirements of this article, applying for a license after June 30 for a new business not previously licensed by the town, shall be entitled to a one-half year license at one-half the fee as required in 24-41.
(Prior Code, § 5-02-080)

Sec. 24-30. Transferability.

(a) *Licensee.* No license shall be transferable to another licensee.

(b) *Location.* When a business is moved from one location to another, the license for such business shall be transferred to the new location. The licensee shall file an application to transfer a license with the town clerk-treasurer.
(Prior Code, § 5-02-090)

Sec. 24-31. Posting required.

Every license issued under the provisions of this article shall be posted in a conspicuous place on the premises where the business is conducted. All licenses issued for a business without a fixed place of business shall be carried by the licensee while the licensee is conducting business and shall be shown to any person with whom the licensee is conducting business or any law enforcement officer upon demand.
(Prior Code, § 5-02-100)

Sec. 24-32. Inspection and regulation; exception.

(a) *Authority to inspect.* Any business in the town may be inspected by town officers and employees authorized to enforce provisions of regulations relating to that business.

(b) *Time of inspection.* In the absence of an emergency, and in the absence of sound reasons whereby an inspection cannot be made during regular business hours, inspections shall be made during normal business hours.

(c) *Identification.* Immediately upon arriving at a place of business for the purpose of making an inspection, the law enforcement officer or town employee making the inspection shall identify himself, and shall state that the purpose of the visit is to make an inspection.

(d) *Exception.* The town may not regulate, inspect, control and supervise any aspect of a profession that is duly licensed and regulated by the state or federal government where such regulation, inspection, control and supervision are clearly covered and provided for by such governmental agency.
(Prior Code, § 5-02-110)

Sec. 24-33. Number of licenses.

In the absence of a specific provision to the contrary, no regulation is to be interpreted as limiting the number of licenses that may be issued, or as limiting the number of business enterprises of any particular kind that may be operated in the town. No town officer or employee may refuse to issue a license because of the officer's or employee's belief that there is enough of a particular type of business in the town already.
(Prior Code, § 5-02-120)

Sec. 24-34. Licenses issued contrary to article.

Any license issued in violation of this article shall be null and void and of no effect, without necessity of any proceedings or revocation or nullification thereof.
(Prior Code, § 5-02-130)

Sec. 24-35. Unlawful activities.

No provision herein contained shall be construed so as to license any trade, business, occupation, vocation, profession, or entertainment prohibited by any law of the United States, any law of the state, or any ordinance of the town.
(Prior Code, § 5-02-140)

Sec. 24-36. Interstate commerce.

Nothing contained in this article is intended to operate as to interfere with the power of the Congress of the United States to regulate the commerce between the states.
(Prior Code, § 5-02-150)

Sec. 24-37. Grounds for revocation.

The mayor may revoke and cancel any license issued by the town for fraud or misrepresentation in its procurement or for violation of any provision of this Code or any ordinance of the town or any state or federal statute.
(Prior Code, § 5-02-160)

Sec. 24-38. Notice of denial or revocation.

Denials of applications or revocations of town licenses shall be made in writing and the applicant shall be notified by certified mail, return receipt requested. The notice shall be mailed within three working days of denial or revocation.
(Prior Code, § 5-02-170)

Sec. 24-39. Appeal.

(a) *Notice of appeal.* An applicant who has been denied a license or whose license has been revoked may appeal said denial or revocation to the town council by notice, in writing, filed with the town clerk-treasurer within ten days of the date of the revocation or denial.

(b) *Contents of notice.* The notice shall state any reasons supporting the grant of a license, shall contain the applicant's correct mailing address, and shall be signed by the applicant.

(c) *Placement on agenda.* The town clerk-treasurer shall cause the matter to be placed on the council agenda not more than 30 days after the receipt of the notice of appeal.

(d) *Notice of hearing.* The applicant shall be notified in writing, by certified mail, return receipt requested, of the date and time the matter will be considered on the agenda.

(e) *Hearing.* The applicant may appear at the time and place and be heard. The applicant may be represented by counsel at this hearing. No such suspension or revocation is final until the licensee has been given the opportunity for a hearing to contest the suspension or revocation under the procedures prescribed.
(Prior Code, § 5-02-180)

Sec. 24-40. Violation; penalty.

(a) *Form of complaint.* Whenever a violation of this article occurs or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the cause and basis thereof shall be filed with the town clerk-treasurer, who shall make or cause to be made a complete investigation of the allegations and take the appropriate action as provided by this article.

(b) *Penalty.* Violations of the provisions of this article or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be subject to penalty as provided in section 1-7, 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 such.
(Prior Code, § 5-02-190)

Sec. 24-41. Business license fees.

For the purpose of establishing business license fees, all business establishments, unless otherwise specified in this article, shall pay business license fees based on the number of permanent full-time employees based on any three-month period as shall be as established by resolution.
(Prior Code, § 5-03-010)

Sec. 24-42. Transportation firms.

The license fee for transportation firms, as defined in section 24-1, shall be as established by resolution.
(Prior Code, § 5-03-070)

Sec. 24-43. Utilities.

The license fee for utilities, as defined in section 24-1, shall be as established by resolution.
(Prior Code, § 5-03-080)

Sec. 24-44. Delinquent charges.

When an application is declared delinquent as provided in section 24-29, a delinquent charge of ten percent of the annual license fee per month (or part thereof) that the application remains delinquent, shall be due and payable along with the annual license fee.
(Prior Code, § 5-03-090)

Secs. 24-45—24-61. Reserved.

ARTICLE III. RETAIL BEER AND WINE SALES*

DIVISION 1. GENERALLY

Sec. 24-62. Definitions.

Unless otherwise required by the context, the terms "beer" and "wine" in this article shall be construed to mean that as defined by the state; and the term "person" in this article shall be construed to mean every individual, partnership, corporation, or association.
(Prior Code, § 5-04-010)

State law reference—Definitions, MCA 16-1-106.

Sec. 24-63. License required by state.

All persons duly licensed by the state to sell or dispose of beer or wine in the town or possess beer or wine for sale therein, and none other, shall obtain a license pursuant to the provisions of this article.
(Prior Code, § 5-04-030)

State law reference—State beer and wine licenses, MCA 16-4-101 et seq.

*__State law reference__—Beer and wine, MCA 16-3-101 et seq., 16-4-101 et seq.

Sec. 24-64. Application of state regulations.

Any person licensed to sell or dispose of beer or wine in the town pursuant to the provisions of this article, shall thereby be entitled to sell or dispose of beer or wine in the town only to the extent and in the manner authorized by the state.
(Prior Code, § 5-04-070)

Secs. 24-65—24-86. Reserved.

DIVISION 2. LICENSE

Sec. 24-87. Required.

Any person who desires to engage in the business of selling beer and/or wine in the town under the provisions of state law shall, after acquiring a state license for such activity, then apply for a license from the town.
(Prior Code, § 5-04-020)

Sec. 24-88. Application and fee.

Every person desiring to sell or dispose of beer or wine in the town, or possess beer or wine for sale therein, must first apply to the town clerk-treasurer for a license to do so. On satisfactory evidence that any applicant is duly licensed to sell or dispose of beer or wine in the town by the state, and all applicable fees established by resolution have been paid, said town clerk-treasurer shall place the business license application on the next town council agenda. Upon council approval, the town clerk-treasurer shall issue said business license. If the town council, at its discretion, decides that it is in the best interest of the town to deny said business, the town clerk-treasurer shall refund applicable fees previously paid in advance.
(Prior Code, § 5-04-040)

State law reference—License fee authorized, MCA 16-4-503.

Sec. 24-89. Qualifications.

No person shall be entitled to a license under this division unless such person has in respect to the same premises for which a license under this division is sought, a subsisting beer and wine license issued under the laws of the state.
(Prior Code, § 5-04-060)

Sec. 24-90. Expiration.

All licenses pursuant to this division shall expire at 12:00 midnight on December 31 of the year in which issued.
(Prior Code, § 5-04-050)

Secs. 24-91—24-108. Reserved.

ARTICLE IV. RETAIL LIQUOR SALES*

DIVISION 1. GENERALLY

Sec. 24-109. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Club means a national fraternal organization, except college fraternities, or an association of individuals organized for social purposes and not for profit, with a permanent membership and existence of not less than two years, and permanent quarters or rooms.

Interdicted person means a person to whom the sale of liquor is prohibited under the laws of the state.

License means a license issued by the town to a qualified person, under which it shall be lawful for the licensee to sell and dispose of liquor at retail as provided in this article.

Licensee means the person to whom a license is issued.

Liquor means an alcoholic beverage, except beer and table wine.

Person means every individual, co-partnership, corporation, hotel, restaurant and club, and all licensed retailers of liquor, whether conducting the business singularly or collectively.

State liquor store means a liquor store established and operated by the state under the state laws.
(Prior Code, § 5-05-020)

*__State law reference__—Liquor, MCA 16-3-101 et seq.

Sec. 24-110. Purpose.

In order to better ensure the control of the sale of liquor in the town, it is declared necessary to further regulate the sale of liquor at retail establishments in the town, and to that end, require all persons, except clubs, to apply for and procure from the town licenses to sell liquor purchased by them at state liquor stores in accordance with this article, and to provide penalties for violation thereof.
(Prior Code, § 5-05-010)

Sec. 24-111. License; disposal of fees.

All receipts from license fees and fines collected under the provisions of this article shall be deposited to the credit of the general fund of the town, out of which said fund the cost of administering this article shall be paid.
(Prior Code, § 5-05-100)

Sec. 24-112. Examination of premises by town official.

The council, or any duly authorized representative thereof, the mayor, or any member of law enforcement shall have the right at any time to make an examination of the premises of the licensee for the purpose of ascertaining whether or not this article is being complied with.
(Prior Code, § 5-05-110)

Secs. 24-113—24-137. Reserved.

DIVISION 2. LICENSE

Sec. 24-138. Required.

It is unlawful for any person who has not been issued a license under this division to sell or keep for sale any alcoholic liquor; provided, however, that nothing in this division shall be deemed to apply to those engaged in the sale of liquor:

(1) At the various state liquor stores;

(2) In the quarters or rooms of a club, or at a social function of a club wherever held.

(Prior Code, § 5-05-030)

Sec. 24-139. Application.

Prior to the issuance of a license as provided in this division, the applicant shall file with the town clerk-treasurer an application in writing, signed by the applicant and directed to the town, which application shall specify the location and number of the premises where the business is to be carried out under the license applied for, and the respective names of all persons conducting the business. The application must be accompanied by satisfactory evidence that the applicant has the licenses required by the state.
(Prior Code, § 5-05-050)

Sec. 24-140. Annual fee.

(a) Every licensee under the provisions of this division shall pay an annual fee as established by resolution; provided, however, that where a license is issued hereunder for a period commencing subsequent to the first day of the year for which such license is issued, a pro-rated fee only shall be charged for the balance of such year, but in no event shall the fee charged be less than the amount established by resolution. Nothing in this section shall be construed to entitle any licensee under this division to a refund of any portion of the license fee paid by him in the event of his discontinuing his business, or the revocation of his license prior to the expiration of the year for which such license is issued.

(b) The license fee provided under this section shall be exclusive of, and in addition to, other license fees chargeable by the town.
(Prior Code, §§ 5-03-060, 5-05-040)

State law reference—License fee authorized, MCA 16-4-503.

Sec. 24-141. Qualifications.

No person shall be entitled to a license under this division unless such person has, in respect to the same premises for which a license under this division is sought, a subsisting liquor license issued under the laws of the state.
(Prior Code, § 5-05-090)

Sec. 24-142. Issuance.

Upon the filing of the application accompanied by the evidence thereby required, and upon payment of the required license fee, the town clerk-treasurer shall hold the application for license until the next regular meeting of the town council. If, in the

judgment of the council, it will be in the best interest of the town to refuse such license, the town clerk-treasurer shall refund the license fee paid by the applicant and all documents filed by him, other than said application.
(Prior Code, § 5-05-060)

Sec. 24-143. Contents.

Every license issued under this division shall set forth the respective names of all persons to whom issued and the location by street and number of the premises where the business is to be carried on under such license. If issued to a partnership, the license shall set forth the partnership name and the respective names of the individual partners. Such license shall be posted in a conspicuous place on the premises in respect to which it is issued and shall be exhibited to any member of local law enforcement whenever the same is requested. Every license issued under the provisions of this division is separate and distinct, and no person, except the licensee therein named, shall exercise any of the privileges granted thereunder, and all licenses are applicable only to the respect to which they are issued.
(Prior Code, § 5-05-070)

Sec. 24-144. Expiration.

All licenses pursuant to this division shall expire at 12:00 midnight on December 30 of the year in which issued.
(Prior Code, § 5-05-080)

Sec. 24-145. Renewal after revocation.

After the revocation of a license, the council shall have the power to renew the same, if in its discretion, a proper showing therefor has been made.
(Prior Code, § 5-05-120)

Secs. 24-146—24-173. Reserved.

ARTICLE V. PROFESSIONS

Sec. 24-174. Definition.

The term "professional" means any person whose occupation is subject to the licensing and regulation requirements of MCA title 37.
(Prior Code, § 5-06-010)

Sec. 24-175. Purpose.

The town council has determined that a license for a professional business establishment is necessary for the same reasons set out in section 24-2.
(Prior Code, § 5-06-030)

Sec. 24-176. License required.

All persons maintaining within the town a place in or from which they practice a profession governed by MCA title 37, shall procure a license under the provisions of this chapter, unless exempted as set out in section 24-24.
(Prior Code, § 5-06-020)

Sec. 24-177. Fee required.

The fee for a professional business license shall be the same as for a general business license.
(Prior Code, § 5-06-040)

Secs. 24-178—24-207. Reserved.

ARTICLE VI. ITINERANT VENDORS*

DIVISION 1. GENERALLY

Sec. 24-208. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Consumer means one who uses, and by using destroys the value of, the article purchased.

Itinerant vendor means any person engaged or employed in the business of retailing to consumers by going from consumer to consumer, either on the streets or to their place of residence or employment and soliciting, selling, or offering to sell, or exhibiting for sale (by sample, by catalogue, or otherwise) or taking orders for future delivery of any goods, wares or merchandise or for services to be performed in the future.
(Prior Code, § 5-07-010)

*__State law reference__—County licensing of itinerant vendors, MCA 7-21-2301 et seq.

Secs. 24-209—24-239. Reserved.

DIVISION 2. LICENSE

Sec. 24-240. Required.

Every itinerant vendor, before doing any business in the town, shall first procure a license therefor as provided in section 24-23.
(Prior Code, § 5-07-020)

Sec. 24-241. Application.

(a) Every person desiring to do business as an itinerant vendor shall file with the town clerk-treasurer an application which shall set forth:

(1) Name of applicant.

(2) Place of permanent residence.

(3) Local headquarters, if any.

(4) Time of arrival in the town.

(5) Town or city from which last licensed, if any.

(6) Whether acting as a principal, agent, or employee.

(7) If acting as an agent or employee, the name and place of business of the principal employer.

(8) Brief descriptive list of articles to be offered for sale or services to be performed.

(9) Whether payments or deposits of money are collected when orders are taken or in advance of final delivery.

(b) If the applicant is acting as an agent, the principal's acknowledgment of such agency must accompany the application, as part of the application.
(Prior Code, § 5-07-030)

Sec. 24-242. Fee.

The license fee for each "itinerant vendor" as defined in section 24-208 shall be as established by resolution.
(Prior Code, § 5-03-040)

Sec. 24-243. Term.

A license to carry on the business of an itinerant vendor shall authorize the applicant to conduct such business for a period not to exceed 90 days. Any itinerant vendor wishing to buy a license for a full year at the general business rate may do so.
(Prior Code, § 5-07-040)

Secs. 24-244—24-264. Reserved.

ARTICLE VII. TRANSIENT MERCHANTS

Sec. 24-265. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Temporary premises means any hotel, motel, roominghouse, storeroom, building, or any part of any building whatsoever, tent, vacant lot, freight station, railroad car, or truck, temporarily occupied for the business defined above.

Transient merchant means:

(1) Any person, firm, or corporation whether as owner, agent, consignee, or employee or whether a resident within the town limits, that:

a. Engages in a temporary business of selling and/or delivering goods, wares, or services or who conducts meetings open to the general public where franchises, distributorships, contracts, or business opportunities are offered to participants; or

b. Sells, offers, or exhibits for sale any goods, wares or services, franchises, distributorships, contracts, or business opportunities during the course of any time within six months after a lecture or public meeting on said goods, wares, services, franchises, business opportunities, contracts, or distributorships.

(2) The foregoing notwithstanding, however, a transient merchant, for the purposes of this article, shall not include the following:

a. A person, firm, or organization who shall occupy any of the aforesaid places for the purpose of conducting a permanent business therein; provided, however, that no person, firm, or corporation shall be relieved from the provisions of this article by reason of a temporary association with any

local dealer, trader, merchant, or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant, or auctioneer;

b. Any sales of merchandise damaged by smoke or fire, or of bankrupt concerns, where such stocks have been acquired from merchants of the town therefore regularly licensed and engaged in business; provided, however, no such stocks of merchandise shall be augmented by new goods;

c. A person, firm, or corporation exhibiting goods for sale concurrent with and as an adjunct to a group display, meeting, or convention duly authorized to be held in a publicly owned building and authorized and licensed pursuant to this article; or

d. A person who sells his own property which was not acquired for resale, barter, or exchange and who does not conduct such sales or act a as a participant by furnishing goods in such a sale more than twice during any calendar year.

(Prior Code, § 5-08-010)

Sec. 24-266. License required.

Every transient wholesale merchant, before doing any business in the town, shall first procure a license therefor as provided in section 24-23.
(Prior Code, § 5-08-020)

Sec. 24-267. Fee.

The license fee for each transient retail merchant as defined in section 24-265 shall be as established by resolution.
(Prior Code, § 5-03-050)

Secs. 24-268—24-297. Reserved.

ARTICLE VIII. TRANSIENT RETAIL MERCHANTS*

Sec. 24-298. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Temporary premises means any hotel, motel, roominghouse, storeroom, building or any part of any building whatsoever, tent, vacant lot, freight station, railroad car, or truck, temporarily occupied for the business defined herein.

*__State law reference__—County licensing of transient retail merchants, MCA 7-21-2401 et seq.

Transient retail merchant means any person who shall bring into temporary premises within the town a stock of goods, wares, or articles of merchandise or notions, or other articles of trade, and who solicits, sells, or offers to sell, or exhibits for sale, such stock of goods, wares, or articles of merchandise or notions, or other articles of trade at retail. Such definition shall continue to apply until such person is continuously engaged at such temporary premises for a period of one year.
(Prior Code, § 5-09-010)

Sec. 24-299. License required.

Every transient retail merchant before doing any business in the town shall first procure a license therefor as provided in section 24-23.
(Prior Code, § 5-09-020)

Secs. 24-300—24-316. Reserved.

ARTICLE IX. HUCKSTERS*

DIVISION 1. GENERALLY

Sec. 24-317. Definitions.

Any person engaged or employed in the business of buying and selling farm products, who disposes of such products by selling them at retail to consumers by going from house to house is, within the meaning of this article, a "huckster."
(Prior Code, § 5-10-010)

Secs. 24-318—24-337. Reserved.

DIVISION 2. LICENSE

Sec. 24-338. License required.

Every huckster, before doing business in the town, shall first procure a license, as provided in section 24-23.
(Prior Code, § 5-10-020)

*__State law reference__—County licensing of hucksters, MCA 7-21-2501 et seq.

Sec. 24-339. Application; fee.

Every huckster desiring to do business in the town shall file with the town clerk-treasurer an application as set out in article II of this chapter, and pay the fee established by resolution.
(Prior Code, §§ 5-03-010, 5-10-030)

Sec. 24-340. Term of license.

A license to carry on the business of a huckster shall authorize the applicant to conduct such business for a period not to exceed six months.
(Prior Code, § 5-10-040)

Secs. 24-341—24-368. Reserved.

ARTICLE X. JUNK DEALERS, PAWNBROKERS, SECONDHAND DEALERS AND ANTIQUE DEALERS

Sec. 24-369. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Antique dealer means any person, partnership, or corporation who engages in the business of buying and selling, trading or taking as a pledge, pawn, or security for money loaned, any antique or other object, the value of which appreciates with age.

Coin dealer means any person, partnership, or corporation who engages in the business of buying and selling, trading or taking as pledge, pawn, or security for money loaned, any coin issued by the government of the United States or any other government which is or ever has been in existence.

Gem dealer means any person, partnership, or corporation who engages in the business of buying and selling, trading, or taking as pledge, pawn, or security for money loaned, any gem or precious stone.

Junk dealer means any person, partnership, or corporation who engages in the business of buying and selling old iron, lead, steel, copper, brass, or other metals, bottles, or broken glass, bagging, secondhand clothing or secondhand goods, wares or merchandise, etc., of any kind, or any other article usually found in a junk shop.

Pawnbroker means any person, partnership, or corporation whose business it is to take or receive by the way of pledge, pawn, or exchange of any goods, wares, or merchandise, or any kind of personal property whatsoever, as security for the repayment of money loaned.

Secondhand dealer means any person, partnership, or corporation who engages in the business of buying and selling, trading, or taking as pledge, pawn, or security for money loaned, any secondhand or used merchandise or property of any kind.

Stamp dealer means any person, partnership, or corporation who engages in the business of buying and selling, trading, or taking as pledge, pawn, or security for money loaned, any stamp issued by the government of the United States or any other government which is or ever has been in existence.
(Prior Code, § 5-11-010; Ord. of 12-10-2008)

Sec. 24-370. Register; police inspection.

(a) Any person who carries on the business of pawnbroker, secondhand dealer, junk dealer, keeper of a secondhand store, keeper of a junk shop, coin dealer, stamp dealer, gem dealer, or antique dealer shall keep a register in which shall be entered in legible writing a description of every article pawned to him or purchased by him, with:

(1) The date of the pawning or purchasing;

(2) Date when the article must be redeemed;

(3) Name of the person by whom the same was pawned or by whom purchased; and

(4) The amount loaned thereon or paid therefor.

(b) In case of the sale of any article pawned or pledged, the pawnbroker or junk dealer must enter upon said register:

(1) The name of the purchaser;

(2) The time of the sale; and

(3) The price paid therefor.

(c) The register must always be open to inspection and examination of any law enforcement officer or other persons.
(Prior Code, § 5-11-020; Ord. of 12-10-2008)

State law reference—Authority to require records, MCA 7-21-4207.

Sec. 24-371. Examination of register and property.

No person carrying on the business of a pawnbroker, junk dealer, secondhand dealer, keeper of a secondhand store, coin dealer, stamp dealer, gem dealer, or antique dealer shall fail or neglect to keep the register required by section 24-370, or refuse to exhibit it to any law enforcement officer, or to any third person brought as a friend to redeem property pledged by another requesting to do so, or refuse to permit any law enforcement officer for the town or any third person brought by the pledgor to redeem property pledged, to inspect any article purchased or traded or received.
(Prior Code, § 5-11-030; Ord. of 12-10-2008)

Sec. 24-372. Report to police.

Any person carrying on the business of a pawnbroker, junk dealer, secondhand dealer, keeper of a junk shop, keeper of a secondhand store, coin dealer, stamp dealer, gem dealer, or antique dealer shall be required to make, by 12:00 noon of each day, a copy of the entries for the preceding 24 hours in the register required by section 24-370, and to deliver a copy of the same to the town hall, except items purchased from all estate sales, licensed auction sales, licensed dealers, and regular licensed suppliers.
(Prior Code, § 5-11-040; Ord. of 12-10-2008)

Sec. 24-373. Retention after delivery or register to police.

No property or article purchased, traded, or received by a pawnbroker, junk dealer, secondhand dealer, keeper of a junk shop, keeper of a secondhand store, coin dealer, stamp dealer, gem dealer, or antique dealer shall be sold or taken from the place of business for one week after the date of its receipt and the entry of its description in the register and delivery of a copy of such register to the town hall, except upon written authority from law enforcement.
(Prior Code, § 5-11-050; Ord. of 12-10-2008)

Sec. 24-374. Receiving articles from minors.

No person carrying on the business of a pawnbroker, junk dealer, secondhand dealer, keeper of a junk shop, keeper of a secondhand store, coin dealer, stamp dealer, gem dealer, or antique dealer shall purchase, trade, or receive any article from any person 17 years of age or younger without the written consent of the parent or guardian of such minor.
(Prior Code, § 5-11-060; Ord. of 12-10-2008)

State law reference—Authority to regulate purchases from minors, MCA 7-21-4208.

Chapter 25

RESERVED

Chapter 26

NUISANCES*

Article I. In General

Article II. Community Nuisances

Article III. Abandoned, Junk or Inoperable Vehicles

***State law references**—Nuisances, MCA 27-30-1 et seq.; municipal authority to define, abate and prohibit nuisances, MCA 7-5-4104.

ARTICLE I. IN GENERAL

Sec. 26-1. Litter, junk and weeds.

(a) *Waste material regulations.*

(1) *Allow.* It shall be unlawful for any person, company, or corporation, to permit, allow, or suffer any rubbish, tin cans, ashes, weeds, long grass, paper, old boxes, or unsightly or unsanitary objects or materials to collect or be upon their premises, or the premises between the lot line and curbline, and from the lot line to the center of the abutting alleys of their premises within the limits of the town.

(2) *Throw or place.* It shall be unlawful for any person, company, or corporation to place, throw upon, or cause to be placed or thrown upon, any street, alley, or other public place within the limits of the town, any paper, waste paper, boxes, rubbish, tin cans, weeds, grass, ashes, unsightly or unsanitary objects, offal, manure, garbage, or any disease-breeding substance.

(3) *Vacant lots or parcel.* It shall be unlawful for the owner of any vacant lots or parcels of land within the corporate limits of the town to permit or suffer any of the materials or things mentioned in subsection (a)(1) of this section to be upon such premises so owned by them.

(4) *Responsibility for condition of premises.* For the purposes of this section, the owner of every lot or premises within the limits of the town shall be responsible for the condition of said premises, from the lot line to the curbline, and from the lot line to the center of the abutting alleys of such premises.

(b) *Weeds.* In addition to the penalties herein above imposed, whenever the growth of weeds advances to a condition prohibited by this chapter, the town or its designated official shall notify such owner to remove the same, within seven days of such notice. In default of this being done, the town shall remove the same and the cost thereof shall be a charge upon the owner, and a lien upon the property, and may be enforced, or the amount may be recovered against the owner by a suit before any court of competent jurisdiction, or may be assessed and collected as a special tax against such premises. (Prior Code, § 9-02-090; Ord. of 7-9-2008)

Secs. 26-2—26-20. Reserved.

ARTICLE II. COMMUNITY NUISANCES

Sec. 26-21. Findings.

The town council recognizes that certain action, inaction, or activities as hereinafter defined may constitute a public nuisance, in that said activities threaten the health and wellbeing of all residents of the town. It is further recognized that the existence of such nuisances threatens profound and immediate consequences to the health or wellbeing of the residents of the town, justifying abatement of such nuisance by emergency measures.
(Ord. of 6-8-2000, preamble)

Sec. 26-22. Declaration of public nuisances.

It has been ordained by the town council and its mayor that it is in the best interest of said town to regulate, control, and prohibit conditions within the town limits that may be injurious to the health, indecent or offensive to the senses, or an obstruction of the free use of property, so as to interfere with the comfortable enjoyment of life or property, or which unlawfully obstructs the free passage or use, in the customary manner, of any of the public parks, squares, streets, or other thoroughfares, and which might diminish the general health and/or welfare of the inhabitants of said town, or tend to decrease the value of property values within said town.
(Ord. of 6-8-2000, § 1(1.0))

Sec. 26-23. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Debris means any substance, no matter the composition, that would be declared an unnatural accumulation that does not bear upon the normal use of said property, and that has not been licensed by the town for such accumulation, and which may become injurious to health, indecent or offensive to senses, or an obstruction to the free use of other property, so as to interfere with the comfortable enjoyment of life or property, or otherwise may become a nuisance.

Person means an individual, firm, partnership, company, association, corporation, city, town, or other entity, whether organized for profit or not.

Public nuisance means allowing rubble, debris, junk, refuse, landscaping debris, or other matter to accumulate, resulting in conditions that are injurious to health, are

indecent, offensive to the senses, or which obstruct the free use and comfortable enjoyment of other property so as to interfere with the comfortable enjoyment of life, or the values of property, or which unlawfully obstructs the free passage or use in the customary manner, of any of the public parks, squares, streets, or other thoroughfares, and which might diminish the general health and/or welfare of the inhabitants of said town, or tend to decrease the value of property values within said town. This definition does not apply to properly permitted construction and/or demolition projects during the time necessary permits are in effect. This definition does not include persons servicing, manufacturing, or processing materials, goods, or products upon their property in public view, so long as the materials used in the normal operation of a licensed business are neatly stacked or poled. This definition does not include normal maintenance or landscaping projects, or agriculture projects or endeavors.

Public official means the town mayor, town health board, town marshal or deputy, or town attorney.

Town enforcement officer means the duly appointed and acting nuisance abatement officer of the town, appointed by the mayor and confirmed by the town council. (Ord. of 6-8-2000, § 2)

Sec. 26-24. Actions authorized.

(a) The town council declares that any activity or inactivity which becomes injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or in any way unlawfully obstructs the free passage or use in the customary manner of any public park, square, street, alley, or other public way to be a public nuisance, subject to abatement by summary procedures, including, but not limited to, criminal penalty, civil action, or abatement by removal, or if necessary, by destroying the thing that constitutes the same. All costs of abatement procedures will be borne by the party responsible for the nuisance or responsible for its continuation. On the failure of the town enforcement officer to obtain satisfactory abatement of the nuisance by summary procedures, the town attorney is authorized to institute suit against the party responsible for the nuisance to enjoin such nuisance and to recover damages occasioned by existence of the nuisance, and to charge the responsible party with a criminal violation of this article.

(b) On the determination by the town enforcement officer that a nuisance exists that is subject to summary abatement, such official shall give notice to the person responsible for creation of the nuisance or for its continuance, together with a demand that

such nuisance be abated. Such notice shall state the basis for declaration that a public nuisance exists, the necessity that such nuisance be abated, acts to be done on the part of the person responsible for creating or maintaining the public nuisance to abate such nuisance, acts to be undertaken by public authorities in the event the person responsible for the public nuisance does not abate it, and the approximate costs of abatement to be assessed against the person responsible for creating or maintaining the nuisance. The notice shall also state that, in the event the person responsible for creating or maintaining the asserted nuisance wishes to dispute the determination that a public nuisance exists, and responds within ten days following receipt of the notice, a hearing would be had before the town enforcement officer at the office of such official.

(c) Notice of abatement must also be sent to or served upon the owner of the property, if the owner and the violator are not one and the same person. If the owner of the real property upon which the violation exists is not the same person causing the nuisance, then upon receipt of the notice of violation by the owner, the owner will be given the same opportunity to abate the nuisance and clean up the property as the violator.

(d) In the event that after proper notice is given as mandated in subsection (b) of this section and no response is received by the town from the responsible party, then the town shall proceed with abatement. However, in the event that after notice is given to the responsible party, and that party appeals the town officials' action, then and in that event said appeal shall be presented to the city judge within ten days of said appeal. Each party shall be allowed to present testimony and evidence at the end of which the judge shall render his decision, which shall be binding. In the event of a finding by the city judge of a public nuisance, or such a finding by the town official when no appeal has been taken, the town shall proceed to abatement.

(e) Authority is given to the town enforcement officer for the summary abatement of a designated public nuisance. The authority of such official shall extend to the finding of the existence of a public nuisance under the particular facts, the propriety of abatement procedures, which shall be confined either to destruction or to removal, the assurance that the abatement procedures are carried out in reasonable fashion, and the determination of costs of abatement to be assessed the person responsible for the nuisance.

(f) Abatement may also be accomplished by appropriate shielding of such condition as deemed appropriate by the town enforcement officer (town official).

(g) In addition to abatement of the nuisance as provided for in this section, the town may also pursue criminal sanctions as provided in section 26-25.

(h) After due notice of violation of this article, opportunity to be heard as herein provided, and abatement have been accomplished by the town or its authorized agent, the cost of cleanup and abatement will become a lien upon the real property upon which the violation occurred. Upon the filing of a notice to assert a lien with the clerk and recorder of the county, said lien may be enforced in the same manner as the no payment of property taxes.
(Ord. of 6-8-2000, § 3)

Sec. 26-25. Violations.

Any person violating any of the provisions of this article shall, for each offense, in addition to abatement, be punished by a fine of not less than $25.00 nor more than $500.00, or by imprisonment for not more than six months, or both. It is specifically provided that each day a violation continues after the time for abatement specified in the notice, constitutes a separate offense, thereby subjecting the person in a violation thereby to a daily fine until the abatement is completed.
(Ord. of 6-8-2000, § 4; Ord. of 10-11-2005, § 4)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 26-26. Private action.

Nothing in this article shall prevent a private party from bringing a private action for abatement of a nuisance as otherwise provided by law.
(Ord. of 6-8-2000, § 6)

Sec. 26-27. Compatibility.

Nothing in this article may be construed to abrogate or affect the provisions of any lawful law, ordinance, regulation, or resolution that is more restrictive than the provisions of this article.
(Ord. of 6-8-2000, § 7)

Secs. 26-28—26-57. Reserved.

ARTICLE III. ABANDONED, JUNK OR INOPERABLE VEHICLES*

Sec. 26-58. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned vehicle means any of the following. For the purposes of this section, the term "vehicle" includes a vehicle, machinery, trailer, or parts thereof.

Junk vehicle means any vehicle, machinery, trailer, or parts thereof, located on public property, or illegally parked on private property within the limits of the town, which, as to a vehicle or trailer, does not properly display license plates or stickers indicating current registration and/or, as to any vehicle, machinery, trailer, or parts thereof, which has any one or more of the following characteristics:

(1) Lacks an engine, wheel, tire, properly installed battery, or other structural parts, which renders the vehicle inoperable for use as designed by the manufacturer, provided that, if there is more than one vehicle on the real property, there shall be the necessary number of engines, wheels, tires, batteries, and other structural parts for each respective vehicle;

(2) Has a broken or missing fender, door, bumper, hood, exterior door handle, running board, steering wheel, trunk top, trunk handle, tail pipe, muffler, driver's seat, fuel tank, drive shaft, differential, generator, alternator, or other structural piece;

(3) Has become, or has the potential to become, the breeding ground or habitat of rats, mice, snakes, mosquitoes, or other vermin, rodents or insects, or is otherwise used for the storage, harbor, caging, or dwelling of an animal of any kind;

(4) Has heavy growth of weeds or other noxious vegetation over eight inches in height under or immediately next to it;

(5) Has become a point of collection for stagnant water;

(6) Has junk, garbage, refuse, gasoline or fuel other than in its fuel tank, paper, cardboard, wood, other combustible materials, solid waste, or other hazardous material present in it, or which is primarily used for storage of any materials;

*__State law reference__—Abandoned vehicles, MCA 61-12-401 et seq.

(7) Has become a source of danger for children through entrapment in areas of confinement that cannot be opened from inside, through a danger of the vehicle falling or turning over, or through possible injury from exposed surfaces of metal, glass, or other rigid materials;

(8) Has become a potential source of contamination of the soil from petroleum products or other toxic liquids being discharged or leaking from the vehicle;

(9) Has become illegal to operate on the public streets because it is missing one or more parts required by law;

(10) Is an abandoned vehicle; or

(11) Because of its defective, deteriorated, or obsolete condition in any other way constitutes a nuisance or a threat to the public's health or safety.

Machinery means the same as the term "machine" as defined by the current edition of Webster's New Collegiate Dictionary.

Parts mean any mechanical, structural, body, or decorative part of any vehicle, machinery, or trailer.

Trailer means any vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle.

Vehicle means any device by which any person or property may be propelled, moved, or drawn upon a street, except a device which is designed to exclusively move by human power, or be used exclusively upon stationary rails or tracks. The term "vehicle" shall include, but is not limited to, an automobile, truck, van, sports utility vehicle, recreational vehicle, camper, motorcycle, trailer, watercraft, boat, canoe, jet ski, snowmobile, ATV, or aircraft.
(Prior Code, § 10.30.020; Ord. of 11-13-2005)

Sec. 26-59. Penalty for violating this article.

Any person violating the provisions of this article shall, for each offense, be punished by a fine of no less than $25.00 nor more than $500.00, or by imprisonment in jail for not more than six months, or by both fine and imprisonment. In addition, the city court shall impose any other costs for the removal, storage, and any other costs associated with disposal of said motor vehicle. It is specifically provided that each day a violation continues after the time for removal or covering specified in the notice, constitutes a

separate offense, thereby subjecting the person in violation thereof to a daily fine until the abandoned, wrecked, or junked vehicle or parts thereof are removed from the private property, or covered as provided in the notice.

(Prior Code, § 10.30.100; Ord. of 11-13-2005)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 26-60. Public nuisance declared.

In addition to and in accordance with the determination made and the authority granted by Montana Code Annotated to remove abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof as public nuisances, the town council hereby makes the following findings and declarations:

(1) The accumulation and storage of abandoned, wrecked, dismantled or inoperative vehicles or parts thereof on private or public property, not including highways, is hereby found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare.

(2) Therefore, the presence of an abandoned, wrecked, dismantled, or inoperative vehicle, or part thereof, on private or public property, including but not limited to, streets, alleys and other public ways within the town limits, but not including state highways, except as expressly hereinafter permitted, is hereby declared to constitute a public nuisance, which may be abated as such in accordance with the provisions of this chapter.

(Prior Code, § 10.30.010; Ord. of 11-13-2005)

Sec. 26-61. Exceptions.

This article shall not apply to the following:

(1) When such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise on land which such business or enterprise is authorized by the town's zoning regulations.

(2) A vehicle which was recently involved in a collision, duly documented by a timely report filed with the appropriate law enforcement agency or the state department of transportation, or its equivalent in a sister state, shall not be deemed a junk vehicle unless the owner/operator of such vehicle fails to repair the same within a 60-day period of time after said collision.

(3) Nothing in this article shall authorize the maintenance of a public or private nuisance defined under provisions of law.

(4) Nothing in this article and none of these exemptions alter any zoning regulations for the land on which the vehicle is located.

(Prior Code, § 10.30.030; Ord. of 11-13-2005)

Sec. 26-62. Exclusive regulation.

This article is not the exclusive regulation of abandoned, wrecked, dismantled, or inoperative vehicles within the town. It shall supplement and be in addition to the other regulatory codes, statutes and ordinances heretofore or hereafter enacted by the town, the state, or any other legal entity or agency having jurisdiction.

(Prior Code, § 10.30.040; Ord. of 11-13-2005)

Sec. 26-63. Enforcement.

Except as otherwise provided herein, the provisions of this article shall be administered and enforced by the town marshal. In the enforcement of this article, such officer and his deputies may enter upon private or public property to examine a vehicle, or parts thereof, or obtain information as to the identity of a vehicle and to remove or cause the removal of a vehicle, or parts thereof, declared to be a nuisance pursuant to this article.

(Prior Code, § 10.30.050; Ord. of 11-13-2005)

Sec. 26-64. Enter private property.

When the town council has contracted with, or granted a franchise to, any person, such person shall be authorized to enter upon private property or public property to remove or cause the removal of a vehicle, or parts thereof, declared to be a nuisance pursuant to this article.

(Prior Code, § 10.30.060; Ord. of 11-13-2005)

Sec. 26-65. Administrative costs.

The town council shall determine and fix an amount to be assessed as administrative costs (excluding actual cost of removal of a vehicle or part thereof) under this chapter.

(Prior Code, § 10.30.070; Ord. of 11-13-2005)

Sec. 26-66. Abatement.

The abatement of conditions which constitute a public nuisance prohibited by this article, shall be accomplished under the provisions of this section.

(1) The health board shall be responsible for initiating abatement proceedings on its own initiative, or upon receiving a signed complaint as hereinafter provided in subsection (2) of this section.

(2) When the health board receives a complaint that that a public nuisance exists, the health board or its agent, shall inspect the property alleged to be in violation of this article, to determine whether there is a violation.

(3) If the health board determines there is a violation of this article, the health board shall direct the town attorney to notify the owner of the property of the violation by mail, as set forth by the provisions of this article.

(4) The owner may, after receipt of notice of the violation, submit a plan of abatement to the health board which shall include:

a. The type of abatement or shielding to be undertaken.

b. The date for commencement of action

c. The date for completion of abatement.

The health board may accept such plan, or defer further proceedings under this article pending the date of completion of the abatement. If necessary, the health board may request assistance in its review of the proposed plan, from the planning board.

(5) In the alternative, the owner may, within 14 days of the date of issuance of the order, appeal the abatement to the town council. Upon receipt of a timely notice of appeal, the town council may either:

a. Determine that a violation exists, and order abatement within 30 days; or

b. Determine that no violation exists, and dismiss the proceedings.

(6) In the event that the owner fails to comply with an abatement order, or any abatement plan approved by the health board under subsection (4) of this section, the health board and/or its agent may enter upon the owner's property with the specific purpose of abating or shielding the violation, whichever the health board deems appropriate.

a. The town may assess the property owner/user for the actual costs of abatement.

b. If the assessment is not paid, it shall become a lien upon the property, and enforced as is nonpayment of property taxes.

(Prior Code, § 10.30.080; Ord. of 11-13-2005)

Sec. 26-67. Notice.

(a) Whenever it comes to the attention of the health board that a nuisance exists within the town limits due to the maintenance or presence of abandoned, wrecked, junked, or dismantled motor vehicles, or vehicles on private property within the town

limits, a notice in writing shall be served upon the occupant of the land where the nuisance exists, or in the case where there is no occupant, upon the owner of the property, notifying them of the existence of the nuisance, and ordering its removal in the time specified in this article.

(1) Notice shall be given by United States mail, postage prepaid, addressed to the occupant or the person who is the owner, at the last known address as exists upon the records of the town.

(2) The health board shall give the notice for the removal of the items which constitute the nuisance at least 30 days before the time of compliance with the notice. The notice shall specify clearly the abandoned, wrecked, junked, or dismantled motor vehicles, or parts thereof, upon the private property, which constitute the nuisance, and shall order the removal of the same as specified within this article. The notice shall advise that failure to remove or cover, as specified in the notice, shall render the person so served subject to prosecution for violation of this article, and the penalty therefore as set forth in this article.

(3) Within five days after removal of the vehicle, or parts thereof, notice shall be given to the department of motor vehicles identifying the vehicle, or parts thereof, removed. At the same time, there shall be transmitted to the department of motor vehicles any evidence of registration available, including a registration certificate, certificate of title and license plates. If the town determines that commercial channels are not suitable or are inadequate, it may dispose of such vehicle by removal to any suitable site operated by the town. The town may make final disposition of such vehicles, or parts thereof, or may transfer the same to another site, provided such disposal is only for scrap.

(b) It shall be unlawful and a misdemeanor for any person to fail or refuse to remove an abandoned, wrecked, dismantled, or inoperative vehicle, or parts thereof, or refuse to abate such nuisance when ordered to do so in accordance with the abatement provision of this article, or state law where such state law is applicable.
(Prior Code, § 10.30.090; Ord. of 11-13-2005)

Chapter 27

RESERVED

Chapter 28

OFFENSES AND MISCELLANEOUS PROVISIONS

Sec. 28-1. Statutes adopted.

The criminal laws, statutes, and code of the state as existing in the Montana Code Annotated, insofar as the same are not in conflict with the ordinances of the town, and so far as city courts and city judges have jurisdiction therein, are hereby adopted and declared to be the laws of the town, and shall have the same force and effect in all respects, the same as if the same were set forth and separately passed and approved by the town council and the town mayor as prescribed by law.
(Prior Code, § 9-01-010)

State law reference—Crimes, MCA title 45.

Sec. 28-2. Discharge of firearms and explosives.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Explosive means any compound or mixture, the primary or common purpose of which is to function by explosion; that is, with substantially instantaneous release of gas and heat; but shall not mean or include the components for hand-loading any rifle, pistol, and shotgun ammunition; and/or rifle, pistol, and shotgun ammunition, black powder, primers and fuses when used for ammunition and components for antique or replica muzzle-loading rifles, pistols, muskets, shotguns, and cannons; or consumer fireworks as defined by 27 CFR 555.11; nor shall it include any fertilizer product possessed, used, or sold for a legitimate agricultural, forestry, conservation, or horticulture purpose.

Explosive device means any device so articulated that an ignition by fire, friction, concussion, or by detonation of any part thereof may cause such sudden generation of highly-heated gases that the resultant gaseous pressures are capable of producing destructive effects; but shall not mean or include the components for hand-loading rifle, pistol, and shotgun ammunition; and/or rifle, pistol and shotgun ammunition, black powder, primers and fuses when used for ammunition and components for antique or replica muzzle-loading rifles, pistols, muskets, shotguns, and cannons; or consumer fireworks as defined in 27 CFR 555.11; nor shall it include any fertilizer product possessed, used, or sold solely for legitimate agriculture, forestry, conservation, or horticultural purpose.

Incendiary device means any device so articulated that ignition by fire, friction, concussion, detonation, or other method may produce destructive effects primarily through combustion rather than explosion; but shall not mean or include a manufac-

tured device or article in common use by the general public which is designed to produce combustion for a lawful purpose, including, but not limited to, matches, lighters, flares, and petroleum derivatives; nor shall it include any fertilizer product possessed, used, or sold solely for legitimate agricultural, forestry, conservation, or horticultural purpose.

(b) *Discharge of firearms and explosives prohibited.*

(1) *Prohibited.* It shall be unlawful for any person within the corporate limits of the town to discharge a firearm or explode or set off any explosives, explosive device, or incendiary device; provided, however, that this shall not apply to law enforcement officers in the discharge of their duties.

(2) *Exceptions.* However, it shall not be unlawful for any person to shoot an air gun, spring gun, or bow and arrow upon private property if that person shall have first obtained the express permission of the owner of said property to do so, and proper preventative measures are taken to ensure projectiles do not leave the property. Any damages and any resulting costs associated with and resulting from the damages of errant projectiles to property and individuals other than the originating property and individuals are the responsibility of the property owner where the discharge of the projectile originated.

(Prior Code, § 9-02-040; Ord. of 7-9-2008)

Sec. 28-3. Offenses against public property.

Regulations concerning public property.

(1) *Obstructing railroad tracks.* No person shall place or cause to be placed any obstruction upon the track of any railway company within the limits of this town without the permission of such railway company.

(2) *Cellar doors, pits, etc.* No person shall leave or keep open any cellar door, pit, or vault or any other underground opening on, in, or immediately adjoining any street, highway, sidewalk, or alley, or suffer the same to be left or kept open, or to be kept in an insecure condition, so that passersby will be in any danger there from. Should any condition prevail upon any sidewalk, street, alley, or property within the town limits which is dangerous to life or limb, the person responsible for such dangerous condition shall immediately erect barriers to warn the public of the danger and shall maintain a flashing light of red or amber.

(3) *Bonfires.* It shall be unlawful for any person to build or cause to be built within the corporate limits of this town and within a distance of 100 feet of any building, haystack, or any body of combustible material, any bonfire.

(Prior Code, § 9-02-030; Ord. of 7-9-2008)

Sec. 28-4. Handbills.

Regulations concerning handbills.

(1) *Nail, tack, post, paste or hang.* It shall be unlawful for any person to nail, tack, post, paste, or hang any card, sign, advertisements, or bill on any fence, building, or other object within the corporate limits of the town; provided, however, that this shall not include signs of reasonable shape, size, and construction designating some fixed place of business, and hung on said place of business within the corporate limits of the town.

(2) *Scatter.* It shall be unlawful for any person to scatter or cause to be scattered or permit to be scattered, within the corporate limits, any paper, combustible material, or rubbish of any character or description.

(Prior Code, §§ 9-02-070, 9.34.010; Ord. of 7-9-2008)

Sec. 28-5. Open alcoholic beverage containers.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alcoholic beverage means a compound produced and sold for human consumption as a drink, that contains more than 0.5 percent of alcohol by volume.

Open container means any type of container, including, but not limited to, a glass, mug, cup, can, or container constructed to carry any liquid.

(b) *Open container.* No person shall serve, sell, dispense, drink, consume, possess, or transport an open container of any alcoholic beverage within or on property owned by the town, including, but not limited to, public streets, highways, avenues, alleys, or roads of the town, or upon any public grounds, parks, or sidewalks in the town.

(c) *Notice of open container regulations.* All owners, licensees, lessees, or managers of a duly licensed premises in which alcoholic beverages are sold must post, in a conspicuous place near each exit from the premises, a sign advising the public that it is a violation of the town ordinances, and that it is a misdemeanor, to transport an open container of any beverage having alcoholic contents from the licensed premises.

(d) *Replacement signs.* Each person responsible for the posting of the sign provided for in this section must maintain each sign so posted, and such sign must be replaced if mutilated or destroyed. Failure to maintain such signs shall be deemed a violation of this section.

(e) *Variance.* A variance may be granted by the town council, the mayor, or his duly appointed representative upon application by an individual or entity.
(Prior Code, § 9-02-060; Ord. of 7-9-2008)

State law reference—Open containers of alcohol in motor vehicles, MCA 61-8-460.

Sec. 28-6. Loitering.

(a) *Loitering regulations.* No person shall obstruct or encumber any street, sidewalk, fire escape, or any other public place by lounging, idling, or loitering in or about the same. No person shall loiter in or about any public street, public sidewalk, street crossing, alley, bridge, public parking lot, or other place of assembly or public use after being requested to move by any law enforcement officer. Upon being requested to move, a person shall immediately comply with such request by leaving the premises or area thereof at the time of the request.

(b) *Prohibited.* It is hereby prohibited and it shall be unlawful for any minors to enter and loiter, unaccompanied by their parent or legal guardian, upon liquor store premises within the town.

(c) *Duty of adults.* It is hereby prohibited and unlawful for any parent or guardian, retail dealer or his agents or employees, within the town, to allow any minor to enter and loiter, unaccompanied by his parent or legal guardian, upon premises where liquor is sold at retail or at establishments where alcoholic beverages are sold for on-site consumption.

(d) *Exceptions.* Violation hereof shall not be construed to include any person sitting, standing reclining, or lounging in, on or upon the following places or under the following circumstances:

(1) In any designated public or private rest or lounge area.

(2) In any public office or private place of business during the time the person is transacting or conducting business or affairs in such office or place of business, or awaiting the conduct or transaction thereof.

(3) In any depot or terminal for carriage and transportation of property or person by a common carrier or carrier for hire, during the period of the transaction of business with such carrier, or awaiting the arrival or departure of such transportation.

(4) In any hotel, motel, or housing lobby when the person is transacting business therein or is a patron therein, or is visiting with a patron therein.

(Prior Code, § 9-02-020; Ord. of 7-9-2008)

Sec. 28-7. Urination and defecation in public places.

(a) *Definition.* The following word, term or phrase, when used in this section, shall have the meaning ascribed to it in this subsection, except where the context clearly indicates a different meaning:

Public place means all streets, avenues, alleys and parks in the town, all municipal and public buildings, and places to which the public or a substantial group has access, and includes the commonly shared areas, such as common hallways, of a building or apartment complex, and areas of town right-of-way, including sidewalks and streets.

(b) *Public urination and defecation prohibited.* It is unlawful for any person to urinate or defecate on or in any public place, or on private property open to public view, except in restrooms and facilities provided for such purposes.

(Prior Code, § 9-02-050; Ord. of 7-9-2008)

Sec. 28-8. Curfew.

(a) *Loitering of minors prohibited.* It shall be unlawful for any minor under 18 years of age to loiter, idle, wander, stroll, or play in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places between the hours of 10:30 p.m., Sunday through Thursday, inclusive, and 5:00 a.m. the following day, and between the hours of 12:00 midnight Friday and Saturday, and 5:00 a.m. the following day.

(b) *Responsibility of parents.* It shall be unlawful for the parent or guardian or other adult person having the care or custody of a minor under 18 years of age to allow such minor to loiter, idle, wander, stroll, or play in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, and public buildings, places of amusement and entertainment, vacant lots, or other unsupervised places, between the hours of 10:30 p.m., Sunday through Thursday, inclusive, and 5:00 a.m. the following day, and between the hours of 12:00 midnight Friday and Saturday, and 5:00 a.m. the following day.

(c) *Duty of law enforcement; notice to parent or guardian.* Upon finding a minor upon any of the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, and public buildings, places of amusement and enter-

tainment, vacant lots, or other unsupervised places in the town in violation of any of the provisions of this section, law enforcement, upon a first offense, shall immediately take the name of such minor and the name and address of the parent, guardian, or other person having the legal care and custody of such minor and may cause the minor to be taken to his home. Upon a second offense, law enforcement shall cause the minor to be taken to his home and may also notify the parents at such time or by later written notice of the violation of this section, and advise them that unless the terms of this section are complied with, a penalty as hereinafter provided may be invoked against such parents, guardian, or legal custodian.

(d) *Exceptions.* The provisions of this section do not apply to any minor:

(1) On an errand at the direction of the minor's parent or guardian, without any detour or stop;

(2) In a motor vehicle involved in interstate travel;

(3) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;

(4) Involved in an emergency;

(5) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;

(6) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the town, county, school district, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the town, county, school district, a civic organization, or another similar entity that takes responsibility for the minor;

(7) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or

(8) Married, or had been married, or had disabilities of minority removed in accordance with law.

As used herein, the term "emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term "emergency" includes, but is not limited to, a fire, a natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life. (Prior Code, § 9-02-080; Ord. of 7-9-2008)

Chapter 29

RESERVED

Chapter 30

PARKS AND RECREATION*

Article I. In General

Secs. 30-1—30-18. Reserved.

Article II. Public Conduct in Parks and Recreation Facilities

*State law reference—Parks and recreational programs authorized, MCA 7-16-4101 et seq.

ARTICLE I. IN GENERAL

Secs. 30-1—30-18. Reserved.

ARTICLE II. PUBLIC CONDUCT IN PARKS AND RECREATION FACILITIES

Sec. 30-19. Overnight park camping.

(a) *Camping limited.* Camping in the town shall be limited to persons utilizing camping vehicles containing sanitary facilities, or have access to full-time sanitary facilities.

(b) *Camping prohibited.* Camping by all other persons, including, but not limited to, persons utilizing tents, is expressly prohibited in the town, unless they have access to full-time sanitary facilities.

(c) *Penalties.* Any person, firm, association, or corporation violating this section, or any part thereof, shall, upon conviction, be fined not less than $10.00 nor more than $100.00.

(Prior Code, §§ 13.02.010—13.02.030)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 30-20. Prohibited conduct at skate park.

(a) The town council hereby declares that it is unlawful for any person to engage in any of the following conduct while at a town skateboard or inline skating skate park:

(1) Skateboarding, inline skating, or otherwise being present on the skateable surfaces of a town skate park during any hours when posted signs indicate that such skate park is closed and usage is not allowed.

(2) Using bicycles, scooters, or motorized vehicles on the skateable surfaces within the skate park area.

(3) Placing or using ramps, tables, benches, or other objects not constructed as an integral part of the skate park within the skate park's skateable surface areas.

(4) Skating or attempting to skate on the skate park's skateable surface areas during rain, sleet, or snowy conditions, or when the surface of the skate park is wet, snowy, or icy.

(5) Using alcohol, tobacco, or unlawful drugs within any part of the skate park area.

(6) Being a spectator without a skateboard or inline rollerblades while on skateable elements of the town skate park. Spectators may only watch from non-skateable elements of the town skate park.

(7) Allowing or possessing any animals within the skate park skate area.

(8) Littering within the skate park complex.

(9) Possessing any glass or ceramic container while on the skate park skateable surface areas.

(b) Penalties. The penalty for violating any provision of this section shall be a fine of not less than $25.00 and not more than $100.00, plus any appropriate administrative surcharges. The minimum $25.00 fine may not be suspended by the court. No arrest or imprisonment of any person shall occur solely for a violation of this section.
(Ord. No. 13.08, § 13.08.010, 3-12-2007)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Chapter 31

RESERVED

Chapter 32

SOLID WASTE*

Article I. In General

Secs. 32-1—32-18. Reserved.

Article II. Collection and Disposal

*State law reference—Waste and litter control, MCA 75-10-101 et seq.

ARTICLE I. IN GENERAL

Secs. 32-1—32-18. Reserved.

ARTICLE II. COLLECTION AND DISPOSAL*

Sec. 32-19. Title and statement of authority.

This article shall be known as the "Whitehall Solid Waste Ordinance," in accordance with and exercising the power and authority granted to the town by MCA title 75, chapter 10 (MCA 75-10-101 et seq.).
(Prior Code, § 7.04.010; Ord. of 9-9-1996)

Sec. 32-20. Purpose.

The purpose of this provision shall be to generate sufficient revenue to pay all costs of the collection and disposal of solid waste. The costs shall be distributed to each user in the town in proportion to the costs of providing solid waste collection and disposal services, and in accordance with other factors that the town deems appropriate.
(Prior Code, § 7.04.020; Ord. of 9-9-1996; Ord. No. 7.04, § 1(7.04.020), 3-12-2012)

Sec. 32-21. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Compost material means herbaceous material which readily decomposes, such as grass clippings, weeds, garden vegetation, leaves, chipped wood, hay, straw, and small herbivore and poultry manure (not cow or horse manure).

Compost material services means the monthly collection and composting of compost material from May through October, upon request.

Solid waste means all putrescible and nonputrescible wastes, including, but not limited to, garbage, rubbish, refuse, cold ashes, construction and demolition wastes, small dead animals including offal, yard trimmings, compost material, wood products or wood byproducts, and inert materials. The term "solid waste" does not mean municipal sewage or sludge, explosives, liquid wastes, infectious wastes, flammable products, EPA rated hazardous wastes, radioactive wastes, herbicides, asbestos, con-

*State law reference—The Montana Solid Waste Management Act, MCA 75-10-201 et seq.

taminated dirt, sewage tanks, fuel tanks, automobile, truck or tractor tires, wood treated with pentachlorophenol, large household appliances, large household furnishings, and large dead animals.

Solid waste services means the town's municipal solid waste collection and disposal services.
(Prior Code, § 7.04.030; Ord. of 9-9-1996; Ord. No. 7.04, § 2(7.04.030), 3-12-2012)

Sec. 32-22. Accumulation of solid waste prohibited.

The owner of any lot shall not allow any solid waste to accumulate upon such lot, including the area between the lot line and the curbline or the centerline of the alley, in excess of the amount of solid waste which is picked up and hauled away pursuant to this article.
(Prior Code, § 7.04.040; Ord. of 9-9-1996)

Sec. 32-23. Solid waste pickup and hauling schedule.

Solid waste shall be picked up and hauled away from each residence and business once per week unless regularly scheduled additional pickups are requested. Additional pickup requests must be made through the town clerk-treasurer. The town may, in its discretion, provide additional special call pickup and hauling services.
(Prior Code, § 7.04.050; Ord. of 9-9-1996; Ord. No. 7.04, § 3(7.04.050), 3-12-2012)

Sec. 32-24. Solid waste service charges.

(a) The town shall implement and modify a fair and reasonable system of rates and charges for solid waste services by resolution of the town council, duly adopted after a public hearing, with notice thereof given as required by law.

(b) All solid waste charges shall be billed to the owner of record of the real property benefiting from solid waste services, and shall be for the previous month. Payment is due on the tenth day of each month.

(c) The owner of the real property benefiting from solid waste services is ultimately liable and responsible for the payment of solid waste charges.
(Prior Code, § 7.04.060; Ord. of 9-9-1996; Ord. No. 7.04, § 4(7.04.060), 3-12-2012)

Sec. 32-25. Solid waste in containers at designated collection places.

(a) Solid waste must be placed in containers obtained from, and approved by, the town.

(b) All containers shall be kept clean and free from accumulation of any substance which would attract or breed insects. All solid waste placed within containers, except heavy solid waste placed in dumpsters, must be contained within plastic bags or other tear-resistant material. All excess liquid shall be removed from the solid waste as much as possible.

(c) The handling or storage of solid waste shall be subject to review by the town health board. Special restrictions or conditions on a case-by-case basis may be established to protect public health and safety.

(d) The collector shall designate the location where solid waste containers and compost material containers shall be placed, such sites being located on the real property benefiting from solid waste services or compost material services, to the extent possible.

(e) The collector may refuse to pick up and haul away any solid waste or compost material not meeting the specifications of this article or not properly placed in the designated collection place.

(f) The meddling with solid waste or compost material containers by placing solid waste in a container without permission of the container's owner or in any way pilfering, scavenging, or scattering the contents of any container is prohibited.
(Prior Code, § 7.04.070; Ord. of 9-9-1996; Ord. No. 7.04, § 5(7.04.070), 3-12-2012)

Sec. 32-26. Optional compost material service.

Upon a request made to the town clerk-treasurer, compost material will be picked up and hauled away one time per month during the months of March through October. The town shall implement and modify a fair and reasonable charge for such compost material service by resolution of the town council, duly adopted after a public hearing, with notice thereof given as required by law. Compost material must be placed in tear-resistant and burst-resistant bags weighing no more than 70 pounds, and shall be placed in the same location as the solid waste containers.
(Prior Code, § 7.04.080; Ord. of 9-9-1996; Ord. No. 7.04, § 4(7.04.080), 3-12-2012)

Sec. 32-27. Burning or burying of solid waste.

The burning or burying of any solid waste within the town is prohibited. The burning of wood, wood pellets and paper within an enclosed heating stove or fireplace is not considered the burning of solid waste.
(Prior Code, § 7.04.090; Ord. of 9-9-1996)

Sec. 32-28. Penalty for violations.

Any person violating any of the provisions of this article may be subject to a fine of $100.00 for the first offense. Fines will double for each successive offense, up to a maximum of $500.00.

(Prior Code, § 7.04.100; Ord. of 9-9-1996; Ord. of 9-10-2012)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Chapter 33

RESERVED

Chapter 34

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

Article I. In General

Article II. Excavations

Article III. Poles and Wires

***State law reference**—Municipal streets, MCA 7-14-4101 et seq.

ARTICLE I. IN GENERAL

Sec. 34-1. Obstructions.

(a) No person shall erect or place, or cause to be placed or erected, an obstruction of any kind whatsoever, in whole or in part, upon any street, alley, or other public grounds within the town.

(b) The owner of any obstruction now standing, or which may be hereafter erected or placed upon any street, alley, sidewalk, or other public grounds within the town, shall remove the same upon being required to do so by a notice from the mayor or street commissioner. For every violation of this section the offender shall, on conviction, be fined not less than $5.00 nor more than $100.00, and an additional sum not exceeding $100.00 for every day that he shall continue in such violation thereof.

(c) Whenever the owner of any obstruction standing or encroaching upon any street, alley, sidewalk, or public ground in the town, shall refuse or neglect to remove the same after notice as provided in subsection (b) of this section, the same shall be deemed a nuisance, and it shall be lawful for the mayor to cause the same to be removed or taken down, in his discretion, and the cost thereof shall be added to the penalty prescribed in subsection (b) of this section; and every person who shall oppose or resist the execution of the orders of the mayor made in pursuance hereof shall, upon conviction, be fined not less than $1.00 nor more than $100.00.

(d) No person shall, without the consent of the town council, erect or maintain any bow-window, balcony, or portico extending or projecting over or across any street or sidewalk, or any part thereof. Any person violating the provisions of this section shall be fined not less than $1.00 nor more than $50.00 for every day that the same shall be continued after notice to remove the same.

(e) It shall be the duty of the occupant of any premises within the limits of the town to keep the sidewalk in front of the same at all times clear of boxes, wood, or other encumbrance or obstruction to travel, except that such occupants, when receiving or shipping goods, may temporarily occupy such portion of the sidewalk as is necessary for that purpose, leaving a passageway at all times.

(f) No person shall place or deposit any boxes, barrels, fuel, wagons, carts, sleighs, or other encumbrances upon any street, avenue, alley, sidewalk, or public place within the limits of the town except in accordance with the provisions of this chapter respecting building permits.

(g) No person shall keep a stand for the sale of goods upon any street, avenue, alley, or sidewalk, or do any act or thing to collect a crowd so as to interfere with the free passage of teams or pedestrians.
(Prior Code, § 10.02.010)

Sec. 34-2. Blocking public grounds and alleyways.

It shall be unlawful for any person or corporation to encumber any alleys or public grounds with abandoned or junk vehicles, lumber, firewood, or any other material or obstacles. Any person or corporation violating this section or any part thereof, or failing to comply with any of its provisions, upon conviction thereof, shall be fined not less than $25.00 nor more than $100.00; and in addition to such fine, shall be liable to any person, and to each person desiring to lawfully use and occupy such public street or highway and who is prevented from doing so by a violation of this section, in the sum of $25.00.
(Prior Code, §§ 12.02.020, 12.02.030; Ord. of 10-27-1980)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 34-3. Sidewalk maintenance and cleaning.

It shall be the duty of the occupant of any premises within the town limits, or in case the same are occupied, then of the owner or his agent to keep the sidewalks in front of and adjoining his premises clean and safe for pedestrians, and to repair the same from time to time, and such occupant, owner, or agent shall, with all reasonable dispatch, remove snow, ice, slush, mud, or other impediment to safe and convenient foot travel, and prevent the continuance and accumulation of the same. Every person failing to comply with the provisions of this section shall be deemed guilty of committing a nuisance, and upon conviction thereof, shall be fined not less than $1.00 nor more than $50.00.
(Prior Code, § 10.02.010)

Sec. 34-4. Maintenance of ditches, sewers, etc.

Any person, corporation, or corporations who shall dig, construct, maintain, own or use, either as proprietor or tenant, any ditch, flume, canal, pipe, or sewer, over or across or through or along the line of or extending into the town, shall be required to keep such ditch, flume, canal, pipe, or sewer substantially covered at every point where the same crosses or extends into, through or over any portion of any street or alley or public square, so that the same may be crossed or passed over by the traveling public with safety and convenience, and shall sink, imbed, cover and protect such ditch, flume,

canal, pipe, or sewer at such points in such manner as that the same shall cause no obstruction or impediment to the free, convenient and safe use of such street, alley, or public square as a public highway. Any person, corporation, or corporations offending against any of the provisions of this section shall be fined not less than $10.00 nor more than $100.00, and the judge may, as a part of the judgment in such case, order that such nuisance be abated by the town marshal, at the cost of the person owning the property causing such nuisance.
(Prior Code, § 10.02.010)

Sec. 34-5. Gutters and downspouts.

No person, corporation, or company shall, without the consent of the town council, erect, construct, or maintain any gutter, eaves-trough, or eaves-spout extending or projecting into, over, or across any street or sidewalk within the town.
(Prior Code, § 10.02.010)

Sec. 34-6. Lawn sprinklers.

No person shall place any revolving foundation, hose, or lawn sprinkler so that the water from the same shall be thrown upon any street, avenue, or sidewalk to the annoyance of passersby, and no person shall cause any water to flow over or upon any street, avenue, or sidewalk.
(Prior Code, § 10.02.010)

Secs. 34-7—34-30. Reserved.

ARTICLE II. EXCAVATIONS

Sec. 34-31. Application and fees.

No person, firm, or corporation shall dig up or excavate any portion or part of any street or alley within the town, for the purpose of repairing or laying service pipes for water supply, or for any other purpose whatsoever, without first filing with the town clerk-treasurer a written application for a permit to do said work. Said application for permit is to contain a description of the kind and character of work to be done, the square feet of the roadway or alley to be disturbed, the material to be used, how the work will be done, and a statement that the street or alley will be left in the same condition, after the work is done, as it was before.
(Prior Code, § 12.10.010; Ord. of 1-10-1980)

Sec. 34-32. Excavation liability insurance.

Before any excavation work is started in the town, the individual, persons, or corporation performing said excavation shall provide the town with an acceptable broad form liability insurance policy, covering excavation, with minimum limits of $100,000.00/$300,000.00 for bodily injury, and $100,000.00 for property damage.
(Prior Code, § 12.10.015; Ord. of 4-5-1982)

Sec. 34-33. Rate for street repairs.

The person, firm, or corporation doing work pursuant to the provisions of this article or authorizing the same, shall pay an additional amount of $0.26 per square foot of street or alley on nonpaved streets or alleys, and $0.75 per square foot of paved streets or alleys to be disturbed.
(Prior Code, § 12.10.020; Ord. of 1-10-1980)

Sec. 34-34. Permit.

If it appears from said application that the proposed work will conform to all provisions of this article so far as applicable, and if said application is accompanied by said proof of liability insurance, the town clerk-treasurer shall issue a permit for the work desired, and it shall be unlawful for anyone to do said work without such a permit.
(Prior Code, § 12.10.030)

Sec. 34-35. Inspection and regulation.

All work done under said permit shall be done under and in compliance with the direction of the street and alley committee of the town council, which shall approve or disapprove of the work as completed. If the council approves of the work, then the cash shall be cancelled and the money returned to the owner.
(Prior Code, § 12.10.040; Ord. of 1-10-1980)

Sec. 34-36. Penalties.

Any person, firm, or corporation found guilty of any violation of any of the provisions of this article shall be fined not to exceed $500.00, and each day's maintenance shall be a separate offense. In addition, said person shall pay the cost of restoring said excavated portion of street or alley to the same condition as it was before. In addition, said town may refuse, through its town council, to supply water to any service pipes laid in violation of this article until this article has been complied with.
(Prior Code, § 12.10.050)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Secs. 34-37—34-60. Reserved.

ARTICLE III. POLES AND WIRES

Sec. 34-61. Interpretation.

This article shall be construed to be in harmony with the provisions of the Revised Statutes of Montana.
(Prior Code, § 5.12.010)

Sec. 34-62. Regulations.

It shall be unlawful for any telegraph, telephone, electric light, or electric power line to be constructed upon any of the streets of the town. It shall be unlawful for any of said lines or for any new poles or fixtures to be erected, established, or constructed on any of the streets of the town.
(Prior Code, § 5.12.020)

Sec. 34-63. Duty of mayor.

It shall be the duty of the mayor to designate such alleys within the limits of the town as he may deem proper, upon which such line shall be constructed, operated, and maintained.
(Prior Code, § 5.12.030)

Chapter 35

RESERVED

Chapter 36

SUBDIVISIONS*

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***State law references**—Montana Subdivision and Platting Act, MCA 76-3-101 et seq.; local subdivision regulations, MCA 76-3-501.

Article IV. Design Standards and Required Improvements

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ARTICLE I. IN GENERAL

Sec. 36-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Approval means the official action taken in regard to a proposed subdivision, plat, or dedication by the town council.

Block means a parcel or tract of land entirely surrounded by public streets, highways, waterways, railroad rights-of-way, parks, unsubdivided land, or a combination thereof.

Board means the official appointed planning board.

Building means a structure designed or used as living quarters for one or more families, or the structure designed or used for occupancy by people for commercial or industrial uses.

Building setback line means an imaginary line requiring all buildings to be set back a certain distance from lot lines and street rights-of-way.

Certificate of survey means a drawing of a field survey prepared by a registered land surveyor for the purpose of disclosing facts pertaining to boundary locations.

Comprehensive plan means any comprehensive plan, general plan or master plan or any parts thereof, or any refinement or update approved by the town; a plan or any of its parts, such as a plan of land use and zoning, thoroughfares, sanitation, recreation and other related matters.

Condominium means a form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and all other parts of the project held in common with owners of the other units.

Covenant means an agreement or promise of two or more parties, by deed in writing, by which either of the parties pledges himself to the other that something is done or shall be done.

Dedication means the deliberate appropriation of land by an owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The land becomes dedicated only when accepted by official action of the town council.

Dwelling unit means any building or other structure proposed or built for permanent occupancy by people.

Easement means a recorded grant of permission given by a property owner to another person, public utility company, town, or state for a specific use of a portion of his property.

Engineer or *registered professional engineer* means a person licensed in conformance with the Montana Professional Engineers' Registration Act to practice engineering in the state.

Examining land surveyor means the town engineer or a registered land surveyor duly appointed by the town council to review surveys and plats submitted for filing.

Governing body means the town council of the Town of Whitehall.

Location map means a small-scale map showing the location of a tract of land in relation to a larger land area.

Lot means a parcel, plot, or other land area of suitable building size, as required in this chapter and/or an existing zoning ordinance, which is created by subdivision for sale, transfer, or lease, and referred to by metes and bounds, bearings and distances, or number in large tract developments.

Lot measurements mean the following:

Lot area means the total area determined exclusive of street, highway, alley, road, or other rights-of-way.

Lot depth means the distance of parallel lot lines drawn from the front to the rear lot lines, averaged when necessary for irregularly shaped lots.

Lot frontage means the width of a lot nearest to and measured along the same street as interior lots.

Lot width means the width of the lot measured along the minimum building setback line. For lots on curved streets or cul-de-sacs, the lot width shall be measured at the building setback line.

Lot types are as follows:

Corner lot means a lot located at the intersection of two or more streets.

Interior lot means a lot with frontage on only one street.

Through lot means a lot with frontage on two nonintersecting streets.

Mobile home means any vehicle mounted or designed for mounting on wheels so as to permit its being transported on streets, roads, or highways, and designed to be used as a dwelling with or without a permanent foundation.

Mobile home park means a tract of land providing two or more mobile home lots for lease or rent to the general public.

Monument or *permanent monument* means any structure of masonry, metal, or other permanent material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

Open space means a land or water area open to the sky exclusive of streets, buildings, or other structures.

Overall development plan means the master plan of a subdivision design for a large area which is to be developed by stages.

Planned unit development (PUD) means a land development project consisting of residential clusters, industrial parks, shopping centers and office building parks, or any combination thereof, which comprises a planned mixture of land uses built into a prearranged relationship to each other, and having open space and community facilities in a common ownership.

Plat means a graphic representation of a subdivision showing the division of land into lots, parcels, blocks, streets and alleys, and other divisions and dedications.

Preliminary plat means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks and other elements of a subdivision which furnish a basis for review by the town council; and the same shall be accompanied by any proposed covenants to run with the platted land and other elements of the proposed subdivision required to furnish a basis of review by the council.

Final plat means the final drawing of the subdivision and dedication prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in the Montana Subdivision and Platting Act (MCA 76-3-101 et seq.) and this chapter.

Minor subdivision plat means the special and final, authorized and approved, drawing, map, or chart of a proposed subdivision development containing five or fewer parcels, all of which front on an existing public road where no land in the subdivision will be dedicated to public use, and which has been approved by the

department of health and environmental sciences, where such approval is required by state statute, and which meets the specifications of these regulations, and which is filed with the county clerk and recorder.

Vacated plat means a recorded plat which has been removed from the county record under provisions of state law.

Public improvement means any structure or facility constructed to serve the residents of a subdivision or the general public, such as parks, streets or roads, sidewalks, curbs and gutters, street lighting and systems for water, sewer, drainages, or utilities.

Recreational vehicle park means a place used for public camping where persons can rent space to park individual camping trailers, pickup campers, motor homes, travel trailers, or automobiles for transient dwelling purposes.

Right-of-way means a strip of land dedicated or reserved for use as a public way.

Should means permissive.

State means the State of Montana.

Street types mean a way for vehicular traffic designated as a street, highway, thoroughfare, parkway, road, avenue, boulevard, land, drive, place, or however otherwise designated.

Alley means a public right-of-way which provides a secondary means of access to a property.

Arterial means an urban street which provides unity throughout a contiguous urban area. Access to abutting property is secondary to continuous movement of traffic.

Collector is primarily residential in nature which filters traffic from local streets before their capacity is exceeded and then conducts it to arterials or local generators such as schools, shopping centers, or community centers.

Cul-de-sac means a dead-end street with a turnaround facility.

Frontage access (service road) means a local or collector street usually parallel and adjacent to an arterial or major collector street, which provides access to abutting properties and safer control of traffic access to arterials or collectors.

Half-street is a portion of the width of a street, usually along the outside perimeter of a subdivision, where the remaining portion of the street could be provided in another subdivision, or on adjacent land.

Loop means a local street which begins and ends on the same street, generally used for access to properties.

Major local means a residential street which provides local access to adjacent property, and also allows for the slow and light movement of traffic through a neighborhood.

Minor local means a residential street which provides local access to property within a continuous and harmonious neighborhood.

Subdivider means any person, group, corporation, or other entity, or any agent thereof, dividing or proposing to divide lands so as to constitute a subdivision.

Subdivision means a division of land, or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and condominium. The term "subdivision" also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease, on which recreational camping vehicles or mobile homes will be placed.

Subdivision, minor, means a subdivision that creates five or fewer lots from a tract of record.

Town means the Town of Whitehall, Jefferson County, Montana.

Town council means the duly elected town council for the Town of Whitehall.

Tract means land areas to be subdivided.

Vicinity sketch means a map at a scale suitable to locate the proposed plat, showing the boundary lines of all adjacent properties and streets or other information necessary to determine the general location of the proposed plat.

Watercourse means any depression which gives direction to a current of water at any time of the year.
(Prior Code, § 14.02.040)

Sec. 36-2. Authority.

The planning board is charged with the duty of making investigations of all proposed plats, subdivisions, and certificates of survey, and is directed to make recom-

mendations to the town council for approval, conditional approval, or disapproval of the proposed divisions of land coming before the board. Authorization for these regulations is contained in the Montana Subdivision and Platting Act.
(Prior Code, § 14.02.010)

Sec. 36-3. Jurisdiction.

The regulations contained herein shall apply within the town. These regulations shall supplement all other regulations, or where at variance with other laws, regulations, ordinances or resolutions, the more restrictive requirements shall apply.
(Prior Code, § 14.02.020)

Sec. 36-4. Relationship to zoning ordinance.

Newly subdivided or replatted lands shall be directly related to the requirements and provisions of the underlying zone as may be provided in the town.
(Prior Code, § 14.02.030)

Secs. 36-5—36-26. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 36-27. Variance.

(a) *Hardship.* Where the town council finds that extraordinary hardships have or may result from strict compliance with these regulations, it may vary the regulations or standards so that substantial justice may be done and the public interest secured, provided that variation will not have the effect of nullifying the intent and purpose of the comprehensive plan, or portions thereof, or of these regulations.

(b) *Variances.* In granting variances or modifications of stated design standards and/or improvements, the town council may require such conditions as will, in its judgment, substantially secure the objectives of the standards so varied or modified.
(Prior Code, § 14.12.010)

State law reference—Variances, MCA 76-3-506.

Sec. 36-28. Amendments; procedure.

Any regulation or provision of this chapter may be changed and amended by the town council after report and recommendations by the planning board; provided, however, that such amendment shall not become effective until after a public hearing has been held. Public notice shall be given of the intent to adopt the regulations and of

the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.
(Prior Code, § 14.12.020)

State law reference—Public hearing and notice thereof, MCA 76-3-503.

Sec. 36-29. Fees.

(a) *General.* No preliminary or final plat shall be received by the planning board or town council unless or until the required fees have been received by the town engineer and the planning board.

(b) *Review fees.* In order to cover costs of reviewing plans, site inspections, holding hearings and other expenses incidental to the approval of a subdivision, or minor subdivision, the subdivider shall pay a fee at the time of application for approval of a preliminary subdivision plat. The fees shall be charged and collected by the planning board in such amount as may be set by town ordinance.

(c) *Collection of fees.* The Whitehall-Jefferson planning board shall collect fees in the amount established by resolution before commencing required review procedures.
(Prior Code, § 14.12.030)

State law reference—Fees authorized, MCA 76-3-602.

Sec. 36-30. Violations.

Whenever any subdivider or his agent shall have platted, subdivided, or divided into two or more lots, plots, tracts, or smaller parts, the area of which is ten acres or less, any parcel of land, or property, for the purpose of providing building sites or being divided in ownership, either by contract for purchase, by deed, or by both, and whomever, being the owner or agent of the land, does knowingly, or with the intent to defraud, transfer or sell or agree to sell or negotiate to sell such land by reference to or exhibition of, or by other use of a plat or subdivision of such, before such plat has been approved by the planning board and town council and recorded in the office of the county clerk and recorder, such person shall be in violation of this chapter. This section applies to parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract.
(Prior Code, § 14.12.040)

State law reference—Similar provisions, MCA 76-3-104.

Sec. 36-31. Penalties.

Any person who shall violate any of the provisions of this chapter is guilty of a misdemeanor, punishable by a fine of not less than $100.00 nor more than $500.00, or by imprisonment in a county jail for not more than three months, or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.
(Prior Code, § 14.12.050)

State law reference—Similar provisions, MCA 76-3-105.

Secs. 36-32—36-50. Reserved.

ARTICLE III. PLATTING

DIVISION 1. GENERALLY

Sec. 36-51. Responsibility.

No person, firm, or corporation or other entity proposing to make or having made a subdivision of land in the jurisdiction of these regulations shall enter into any contract for the sale of or shall offer to sell any lot, block, or parcel of said subdivision or plat, or any other part thereof, or shall proceed with any construction work on the proposed subdivision, including grading or excavation relating thereto, until final approval of the proposed subdivision has been obtained from the town council.
(Prior Code, § 14.04.010)

Sec. 36-52. Conformance to regulations.

Conformance to these regulations and related state statutes is the responsibility of the subdivider or his agent.
(Prior Code, § 14.04.020)

Secs. 36-53—36-77. Reserved.

DIVISION 2. PREAPPLICATION

Sec. 36-78. In general.

Prior to the submission for approval, the subdivider or his agent is encouraged to prepare a preliminary sketch of the proposed land subdivision, consult with the

planning board's staff about the subdivision in relation to the comprehensive plan, and obtain an explanation of the requirements in this subdivision regulation (see section 36-79 for requirements).
(Prior Code, § 14.04.030)

Sec. 36-79. Preapplication plan.

The subdivider may submit to the planning board's staff a preapplication plan of the proposed subdivision which may be a freehand pencil sketch made directly on a print of the topographic survey required for the preliminary plat. The preapplication plan shall contain all of the following information:

(1) A general vicinity map showing all existing subdivisions and boundary lines of all unplatted acreage of parcels adjacent to the proposed subdivision.

(2) Topographic features of the proposed subdivision showing contour intervals of 20 feet or less and including any embankments, drainage channels, watercourses, rock outcroppings, wooded areas, railroads, power lines, communication lines, aerial or buried, types and locations of buildings, and other significant features.

(3) A legal description of the proposed subdivision.

(4) Zoning of the proposed subdivision and adjacent property.

(5) Information describing the proposed subdivision, such as number of residential lots, typical lot size, sites to be reserved or dedicated for parks, playgrounds or other public areas, sites, if any, for shopping centers, business areas, churches, schools, industry, or other uses.

(6) Street names and widths of all streets within or adjacent to the proposed subdivision.

(7) General location, width and purpose of any known easements within or adjacent to the proposed subdivision.

(8) General location and approximate size of all sanitary sewers, water lines, and storm sewers within the proposed subdivision and sizes of said lines adjacent to the subdivision.

(9) Names and addresses of known owners, sponsors, designers and engineers of the proposed subdivision.

(10) Date, scale, North arrow and total acreage of subdivision.

(Prior Code, § 14.06.010)

Secs. 36-80—36-101. Reserved.

DIVISION 3. PRELIMINARY PLAT

Sec. 36-102. In general.

The subdivider shall cause to be prepared a preliminary plat, together with general improvement plans and other supplementary material as required, and shall file said material with the planning board (see section 36-103 for requirements). This material will be submitted at least 45 days prior to a regularly scheduled board meeting in order to be considered at that meeting.
(Prior Code, § 14.04.040)

Sec. 36-103. Preliminary plats and data.

(a) Upon review of the preapplication plan by the planning board's staff (provided a preapplication plan is to be submitted), the subdivider shall submit a preliminary plat containing the necessary information of the preapplication plan, and also the following additional documents and information:

(1) Eighteen copies of the preliminary plat and general plans for improvements for review by appropriate local, state and federal agencies. The board will send seven copies to the department of intergovernmental relations within five days of submission.

(2) The proposed subdivision plat shall be drawn to a scale not to exceed 100 feet to the inch.

(3) Lot lines, lot and block numbers.

(4) Dimension of all lots and area of all irregularly shaped lots.

(5) Location and acreage of all public areas.

(6) Proposed street sections and profiles of each street and alley.

(7) Location, width and name of all streets, alleys and easements.

(8) Contours with intervals of five feet or less, and proposed drainage patterns.

(9) Total net and gross acreage of the proposed subdivision. Gross area is figured from outside dimensions of parcel to be subdivided, and net area is using the same figures minus any area devoted to streets, alleys, or other public uses.

(10) General location of proposed water, sanitary sewer and storm drain systems.

(11) Proposed park locations, or agreement of payment to the town in the form of a cash donation in lieu of land donations, as provided in state law.

(12) A copy of protective or restrictive covenants, if any.

(13) Preliminary plat form. The preliminary plat shall be legibly drawn by a licensed surveyor on one or more sheets 18 inches by 24 inches or 24 inches by 36 inches in size.

(b) In addition, the planning board may require, when necessary, any or all of the following:

(1) Percolation tests, if septic tanks will be used.

(2) Water table data.

(3) Cross-section and profiles of proposed lot development.

(4) An environmental assessment.

(Prior Code, § 14.06.020)

Sec. 36-104. Publication of legal notice.

The board shall cause to be published a single legal notice in a newspaper having general circulation within the town, or by other legal means, a brief description of the subdivision and telling when and where the board will hold hearings on the application for subdivision, at least 15 days before the regular or special meeting of the board. At such meeting the board will:

(1) Determine if the preliminary plat and application meet the requirements of:

a. These subdivision regulations;

b. The town zoning regulations; and

c. The comprehensive plan.

(2) Review the application, preliminary plat and general improvement plans.

(3) Consider written and/or oral comments from agencies or individuals.

(4) After reviewing the plat, the board shall cause to be written a recommendation for approval, approval subject to specific conditions, or disapproval of the application and preliminary plat for cause, and shall notify the subdivider of its recommendations. These recommendations shall be submitted to the council within ten days after the public hearing.

(Prior Code, § 14.04.050)

Sec. 36-105. Council to approve plat.

(a) The preliminary plat and the recommendations of the board shall be presented to the town council for their review and comment. The town council may approve, disapprove, or conditionally approve the preliminary plat. The council will take this action within 60 days of the initial submission of the preliminary plat. The council will forward a copy of the preliminary plat with a letter stating the action taken and setting forth the reasons for disapproval, or enumerating the conditions to be met to ensure approval of the final plat.

(b) Approval of the final plat will not be affected by changes in the subdivision regulations, that approval of the preliminary plat shall be in force for not more than one year and that the council, at the request of the subdivider, may extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing, and dated and signed by the members of the town council and the subdivider or subdivider's agent. The town council may issue more than one extension.
(Prior Code, § 14.04.060)

Secs. 36-106—36-123. Reserved.

DIVISION 4. FINAL PLAT

Sec. 36-124. Submission requirements.

(a) Upon approval of the preliminary plat by the town council, the subdivider shall file a final plat with the board which conforms to the preliminary plat and conditions as approved by the board and town council, and shall meet all other requirements of the statutes of the state.

(b) If desired by the subdivider or required by the board, the final plat shall constitute only that portion of the approved preliminary plat which is proposed to be recorded and developed at the time; provided, however, that such portion conforms to all the requirements of these regulations; provided, further, that in no event shall that portion of the approved preliminary plat not recorded be changed or altered without the approval of the planning board and the town council.

(c) The final plat as submitted must contain, as a minimum, the following information:

(1) The exterior boundaries of the tract platted, giving such boundaries by courses and distances.

(2) The location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.

(3) All lots and blocks, designating each lot and block by number, and giving the dimensions of each lot and block, and area of irregular lots.

(4) All streets, alleys, avenues, roads and highways, their widths, bearings and the width and purpose of all rights-of-way, and the names of all streets, roads and highways.

(5) The location and dimensions of all parks, common areas, and all other grounds dedicated for public use. Where cash has been accepted in lieu of land dedication, it shall be so stated on the final plat, and the amount of the cash donation stated thereon.

(6) The dimensions of all lot lines and the bearings of all lines.

(7) Certification of zoning change where applicable.

(8) Certification of acceptance of dedicated lands and improvements.

(9) Certificate of the town engineer.

(d) The county clerk and recorder must refuse to accept for filing any plat which has not been approved by the town council.
(Prior Code, § 14.06.030)

Sec. 36-125. Board review.

(a) When a preliminary plat and application have been approved or conditionally approved, the subdivider shall prepare a final plat of all or part of the area covered by the preliminary plat, and submit a final plat which meets the requirements of these regulations as cited in section 36-124.

(b) When the planning board has received the final plat and all needed information pertaining thereto, it shall review the plats and application for conformance to all requirements.

(c) Within 30 days of the planning board review of the plats and application, the board shall either recommend approval or disapproval of the application. If disapproval is recommended, reasons therefor must be stated. The board's recommendations shall be transmitted to the subdivider and the town council.
(Prior Code, § 14.04.070)

Sec. 36-126. Approval.

(a) The council shall approve or disapprove the final plat within 30 days after application for approval of the final plat, and shall return the original and one copy of the final plat to the subdivider within ten days.

(b) The council shall examine the final subdivision plat and shall approve it when, and only when, it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this article, and regulations adopted pursuant thereto. The council shall not disapprove a final plat if it conforms to the approved preliminary plat, and if the subdivider has completed all required changes and met or exceeded all standards and requirements of these regulations. Approvals shall be certified by the town council on the face of the final plat.

(c) If the final plat is disapproved, the grounds for disapproval shall be stated in the records of the town council and a copy forwarded to the applicant. The applicant may then make the necessary corrections within 30 to 60 days, and submit the final plat for approval subject to appropriate fees. Final plat approval shall constitute acceptance of dedicated lands. Such dedications shall be accepted by specific order of the town council, and noted on the final plat.
(Prior Code, § 14.04.080)

Sec. 36-127. Copies.

(a) The subdivider shall file the approved, signed final plat with the county clerk and recorder, and a copy of same with the office of the planning board.

(b) All final plats shall be reviewed for errors and omissions in calculations or drafting by the town engineer ensuring that:

(1) All features, such as streets, drainage and all other improvements and facilities to be operated or maintained with public funds are essentially the same as those shown on the approved preliminary plat;

(2) Permanent control monuments meet all requirements prescribed pursuant to these rules;

(3) All exterior boundaries and corners of the tract are shown in sufficient detail so as to leave no doubt as to how they were established;

(4) All monuments and references marking exterior corners conform to standards of size and position as prescribed in these rules;

(5) Upon determination by the town engineer that the survey data shown on the plat has met the conditions set forth herein, the town engineer shall so certify in a printed or stamped certificate on the plat, such certificate to be signed by the town engineer; and

(6) No land surveyor shall act as town engineer in regard to a plat in which he has a financial or personal interest, other than as a draftsman of the plat.

(c) The following documents shall be filed by the county clerk and recorder with the approved final plat, and the following documents shall be referenced on the face of the plat:

(1) Certification of parks and open space dedicated, or cash donation in lieu of dedication, when endorsed on the plat.

(2) Certified abstract of title or title insurance, and mortgagee, lienholder or claimant's consent when applicable.

(3) Copies of covenants and restrictions, or deed and contract statements relative to public improvements.

(4) Certificate or stamp of approval by the department of health and environmental sciences that it has approved the plans and specifications for sanitary facilities.

(5) Copies of incorporation articles and bylaws for homeowners' associations.

(6) Certification by the subdivider that all or part of the required public improvements have been installed and/or a subdivision improvements agreement securing the future construction of public improvements to be installed.

(7) The bearings, distances and curve data of all perimeter boundary lines, indicated outside the boundary line.

(8) On curved boundaries and on all curves on the plat, sufficient data to enable the reestablishment of the curves on the ground.

(9) Lengths shown to hundredths of a foot, and angles and bearings shown to seconds of arc.

(10) Acreage of the subdivision, gross and net, and the net area of each lot and park.

(11) Township, range, principal meridian, section and quarter section, if portion of a section, or other proper legal description.

(12) Location and description of all monuments to be of record, recovered during retracements, and to be set after filing of the plat.

(13) Certificate of land surveyor.

(14) Certificate of town engineer.

(15) Certificate of subdivider that final plat conforms in all major respects to the preliminary plat as previously reviewed and approved by the council.

(16) All engineering plans, specifications and reports required in connection with public improvements and other elements of the subdivision.

(17) Copies of covenants and restrictions deeded with each lot, statements or notices to be inserted in deeds or contracts requiring water and sewer facility approval and certification, a certified abstract or certificate of title.

(18) Where appropriate, a copy of the homeowners' association incorporation and bylaws for maintaining common property.

(19) Certifications. A certificate of dedication for public sites and rights-of-way including acceptance of same by the town council, and other certificates as may be required.

(20) A copy of the state highway permit when a new street will intersect with a state highway.

(21) Certification that when any private access is proposed, the town council shall not be required to improve or maintain the access.

(Prior Code, § 14.04.090)

Secs. 36-128—36-152. Reserved.

ARTICLE IV. DESIGN STANDARDS AND REQUIRED IMPROVEMENTS

Sec. 36-153. Design standards.

The following design standards and criteria shall be incorporated in any plat, subdivision, or dedication:

(1) *In general.* Land which the planning board has found to be unsuitable for subdivision because of local or general flooding or hazardous drainage, steep slopes, geologic formation, or other features likely to be harmful to the safety, general welfare and health of people, and which the planning board considers inappropriate for subdivision, shall not be subdivided unless adequate preventive methods are planned for overcoming such conditions and are approved by the planning board, the health department, and the town engineering office. In areas located within the floodway of a flood of 100-year frequency as defined by

state law, or deemed subject to flooding by the council, this chapter shall require the subdivider to submit survey data for use in delineating the 100-year frequency floodway where any portion of the subdivision is within 2,000 feet of a live stream, and no official floodway delineations have been made, and no floodway studies have been conducted. This chapter shall waive this requirement where the subdivider contacts the water resources division of the department of natural resources and conservation and that agency certifies that the proposed subdivision is not in a flood hazard area.

(2) *Planning of subdivision to adhere to comprehensive plan.* The planning of a subdivision shall generally adhere to the intent of the officially adopted comprehensive plan and any subsequent amendments.

(3) *Streets.* The arrangement, extent, width, grades and location of all streets shall conform to the officially adopted comprehensive plan and shall be considered in their relation to existing and planned streets, topographic conditions, public convenience and safety, and their appropriate relation to the proposed uses of the land to be served by such streets.

a. Where a subdivision contains an existing or proposed arterial or collector street, the planning board may require a local access street, or provisions limiting access to the arterial or collector street.

b. Street layout shall conform to the most advantageous development of adjoining areas and shall be designed to meet the following criteria:

1. Provide all lots adequate access to public right-of-way.

2. Streets intersecting at right angles, or as near as possible, with no street intersecting with any other street at less than 70 degrees.

3. A tangent of at least 50 feet on local streets and 100 feet on collector and arterial streets shall be required between reserve curves.

4. Connecting street lines deflecting from each other at any point by more than ten degrees shall be connected by a curve with a radius adequate to ensure a sight distance at the centerline of the street of not less than 200 feet for local streets and 300 feet for collector streets, and of such greater radii as determined necessary for special circumstances. Offset intersections should be eliminated wherever possible.

5. Continuation of existing streets shall have a right-of-way width of not less than the existing street unless otherwise specified by the planning board.

6. Half-streets that provide lot frontage shall be not less than 30 feet of right-of-way.
7. Cul-de-sac streets shall be no longer than 400 feet in length. The turnaround portion shall have a right-of-way diameter of at least 110 feet.
8. Street grades shall be designed to provide proper drainage and the grades shall not exceed the following percentages:

Arterial	7 percent
Collector	7 percent
Local	10 percent

The minimum grade shall not be less than 0.5 percent.

9. Minimum street rights-of-way widths shall be as follows:

Street Type	*Minimum Right-of-Way*
Arterial	105 feet
Collector	80 feet
Local	60 feet

10. Street names that duplicate or could be confused with existing street names shall not be used.
11. Vertical clearance, design load capacity, and curb-to-curb widths of new bridges shall comply with the minimum design standards as set forth in a widely published engineering handbook, Geometric Design Guide for Local Roads and Streets—Part 1, as published by the American Association of State Highway Officials and copyrighted 1971.

(4) *Alleys.* Alleys shall be provided in commercial and industrial areas unless other provisions are made for service access and off-street loading. Any alley within a subdivision shall conform to the following:

a. A minimum width of 20 feet.

b. Alley intersection, sharp changes in alignment, and dead-end alleys shall be avoided.

c. Alley grades shall be subject to review.

(5) *Easements.* To service the subdivision, there shall be provided easements for local utilities which service the subdivision, drainage, vehicle or pedestrian

access, upon and/or across lots, or centered on lot lines as and where considered necessary by the planning board and/or requested by the public utilities companies serving the subdivision.

a. Utility easements shall be not less than ten feet in width on side lot lines and 15 feet on the rear lot lines. Said easements may be centered on adjacent lot lines.

b. Where a subdivision is transversed by a watercourse, drainageway, channel, or stream, there shall be provided storm sewers and/or stormwater easement, or drainage right-of-way conforming substantially with the lines of such watercourses, and such further width or construction, or both, as will be adequate and safe in the opinion of the town engineer.

(6) *Blocks.* The length, width and shape of blocks shall be designed to:

a. Provide, where feasible, sufficient width for two tiers of lots.

b. Be at least 400 feet in length, unless terrain or other factors dictate to the contrary.

(7) *Lots.* The lengths, widths and shape of lots shall be designed to:

a. Provide every lot access to a public street.

b. Avoid double frontage lots except where essential to provide separation of residential developments from arterials or to overcome specific disadvantages of topographic or other physical features.

c. Provide lots meeting and/or exceeding the minimum standards as specified by the zoning in effect for the area to be subdivided.

d. Provide lot sizes of at least one-half acre in a subdivision not served by the town sanitary sewer system or other approved central community sewer system.

(Prior Code, § 14.08.010)

Sec. 36-154. Improvements.

The following improvements shall be committed by an approved prearranged plan and/or installed in conformance with plans and specifications approved by the town engineer and in compliance with this chapter, before building permits will be issued to

construct any building or structure on any lot, block, or parcel hereafter subdivided; provided, however, that any and/or all of the requirements may be waived if all lots within the subdivision are one-half acre in area:

(1) Street construction including paving to meet town specifications. The street right-of-way shall be graded to allow for future placement of sidewalks.

(2) Alleys shall be graded and graveled to town specifications.

(3) Curbs and gutters on both sides of the street meet town specifications.

(4) When a subdivision is located within 800 feet of the town water system, the subdivider should be required to connect the proposed subdivision to the system. All other individual wells and water systems shall be installed in accordance with standards prescribed by the health department and the state board of health.

(5) When the town sanitary sewer system of adequate capacity is accessible by gravity flow within 800 feet of the subdivision, the subdivider should be required to connect his subdivision thereto. Where a subdivision cannot be served by an extension of the town sanitary sewer because of elevation, distance, or inadequate capacity, the subdivider shall be required to obtain from the state board of health, approval for the use of septic tanks, disposal fields, or neighborhood disposal systems for the entire subdivision to be so served.

(6) The subdivider should provide the board with a street tree planting plan for its review. Before an occupancy permit is issued for any structure within an approved subdivision, trees shall be planted on the lot as prescribed within the plan.

(7) Street lights will be required on all streets within the subdivision, and such lighting should be designed to meet or exceed the minimum standards set by the latest revision of the American Standard Practice for Roadway Lighting, published by the American Standards Association, New York, New York.

(8) Storm sewers may be required if deemed necessary by the town engineer.

(9) Street identification signs shall be provided to the developer at cost by the town, and the subdivider shall install said signs at street intersections per town requirements.

(10) All utilities should be placed underground; provided, however, that temporary installations may be placed above-ground if the utility company guarantees underground placement of its plant when 30 percent of the recorded lots are sold and developed.

(11) Before occupancy, any permanent structure shall be served by sewer, water, needed storm drainage improvements and the grading of the street right-of-way, to be completed to town engineer specifications.

(Prior Code, § 14.08.020)

Sec. 36-155. Installation options.

The subdivider has the election of the following options for the installation of the required improvements:

(1) The subdivider may create his own special improvement district (SID) at the time of filing of a subdivision plat;

(2) The subdivider shall provide in the restrictive covenants that run with the land, and contracts for sale, a provision that any subsequent purchaser or owner waives all right of protest to a SID formed to provide improvements; or

(3) The subdivider may install any or all of the improvements at his expense.

(Prior Code, § 14.08.030)

Sec. 36-156. Performance bond; time limit.

(a) If the subdivider elects to use section 36-155(3) to provide improvements, or a portion thereof, the town council shall require a performance bond or other approved security necessary to ensure the improvements not covered by any special improvement district are installed to town standards.

(b) If the subdivider elects section 36-155(3) for the installation of improvements, such installation shall proceed with all due diligence and shall be completed within 36 months from the date of issuance of the first building permit within the subdivision, subject to reasonable time extensions which may be granted by the town council.

(Prior Code, § 14.08.040)

State law reference—Security requirements to ensure construction of public improvements, MCA 76-3-507.

Sec. 36-157. Park and open space requirement.

(a) A subdivision plat in which any lot is five acres or less in size shall show that 0.03 acres per dwelling unit exclusive of all other dedications is forever dedicated to the town for parks and playgrounds.

(b) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks and playgrounds is undesirable, the council may, for good cause shown, make an order to be enforced and certified on the plat accepting a cash

donation in lieu of the dedication of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands, or for the initial development of parks and playgrounds.

(1) Where cash has been accepted in lieu of land dedication, the amount of cash donation shall be stated on the final plat.

(2) Where cash has been accepted in lieu of land dedication, the council shall record in the minutes of the hearing upon the proposed subdivision, why the dedication of land for parks and playgrounds was undesirable.

(3) The fair market value shall be determined as of the submission date of the preliminary plat.

(4) The fair market value should be established by an appraisal done by the county classification and appraisal officer.

(5) Park fund monies shall be expended according to a park land and open space policy or plan.

(c) If a tract of land is being developed under single ownership as a part of an overall development plan, and part of the tract has been subdivided, and sufficient park lands have been dedicated or cash donated in lieu to the public from the area that has been subdivided to meet the requirements of this section for the entire tract being developed, the council shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(d) The town council shall waive the park dedication requirement if:

(1) a. The preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

b. The area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (a) of this section;

(2) a. The preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

b. The area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (d)(2)a of this section, is reduced by an amount equal to or exceeding the area of the dedication required under subsection (a) of this section;

(3) The area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (d)(1) and (2) of this section, is reduced by an amount equal to or exceeding the area of the dedication required under subsection (a) of this section; or

(4) a. The subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

b. The area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (a) of this section.

(e) The town council may waive the park dedication requirement if:

(1) The subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(2) The area of the land to be subject to long-term protection, as provided in subsection (e)(1) of this section, equals or exceeds the area of the dedication required under subsection (a) of this section.

(f) The council may waive dedication and cash donation requirements where all of the parcels in a subdivision are five acres or more in size, and where the subdivider enters a covenant to run with the land and revocable only by consent of the council, that the parcels in the subdivision will never be subdivided into parcels of less than five acres, and that all parcels in the subdivision will be used for single-family dwellings.

(g) Where a subdivision contains land to be dedicated to public use, the subdivider shall submit with the preliminary plat either:

(1) A certificate of a licensed title abstractor showing the names of the owners of record of the land to be dedicated, and the names of lienholders or claimants of record against the land, and the written consent of the dedication by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land; or

(2) Title insurance guaranteeing the town interest in the dedicated land in a reasonable amount to be determined by the council.

(Prior Code, § 14.08.050)

State law reference—Park dedication requirements, MCA 76-3-621.

Sec. 36-158. Uniform standards for monumentation.

The following standards shall govern monumentation of land surveys:

(1) All permanent control monuments or monuments set to control or mark the boundaries of any division shall be of not less than one-half inch diameter by 24 inches in length with a cap of not less than one and one-quarter inch diameter, marked in a permanent manner with the registration number of the registered land surveyor in charge of the survey. A cap of the above dimensions may be set firmly in concrete.

(2) Prior to the filing of any subdivision plat or certificate of survey for record, the land surveyor shall confirm the placement of sufficient monuments to reasonably ensure the perpetuation or reestablishment of any corner or boundary at any time during the legal life of the subdivision.

(3) Other monuments set prior to the filing of the plat of such subdivision or certificate of survey plat and shown and described on such plat shall be considered monuments of record and shall be given the same weight as permanent control monuments as long as they remain undisturbed. The relationship of all adjacent monuments of record and sufficient data to show the relationship of the monuments of record to monuments set after recording shall be clearly shown on the plat.

(4) No monuments other than the permanent control monuments shall be required to be set before the recording of the plat or the conveyancing of lands by reference to the plat, if the land surveyor includes in his certification on such plat that the additional monuments required by the Montana Subdivision and Platting Act (MCA 76-3-101 et seq.), and by any local ordinance, shall be set on or before a specified later date.

(5) Monuments not less than three-eighths of an inch in diameter and 18 inches in length and marked with the registration number of the registered land surveyor in charge of the survey shall be set at the following locations:

a. At each corner and angle point of all lots or blocks or parcels of land created;

b. At every point of intersection of the outer boundary of the subdivision with an existing or created right-of-way line;

c. At every point of curve, point of tangency, point of reversed curve, or point of compounded curve on each and every right-of-way line established.

(6) In such cases where the placement of a required monument at its proper location is impractical, it shall be permissible to set a reference monument close by that point, and if such reference monument is set prior to the recording of the plat and its location is properly shown, it shall have the same status as other monuments of record; where any point requiring monumentation has been previously monumented, the correctness of the existing monument shall be confirmed by the land surveyor if used, and if so confirmed shall likewise be considered a monument of record when properly shown and described on the plat recorded.

(Prior Code, § 14.08.060)

Secs. 36-159—36-184. Reserved.

ARTICLE V. MINOR SUBDIVISIONS*

Sec. 36-185. Certificate of survey.

For subdivisions creating five or less lots, the subdivider shall cause to be filed in the offices of the planning board at least 20 days before the regular scheduled meeting of said board, a certificate of survey as required by state law, before same is presented to the town council for approval. After review, the board shall recommend to the town council approval or disapproval of said minor subdivision.

(Prior Code, § 14.10.010)

Sec. 36-186. Minimum requirements.

To be approved, the minor subdivision plat shall meet the following minimum requirements:

(1) The proposed subdivision shall be located adjacent to an existing dedicated public street, or have legal and serviceable access thereto.

(2) Facilities such as water, sewer, power and telephone lines are or will be available to a lot before building proceeds on same.

*State law reference—Minor subdivisions, MCA 76-3-609.

(3) The minor subdivision shall not involve the dedication of any road or street rights-of-way.

(4) The proposed lots are compatible with any existing town ordinance or officially adopted comprehensive plan.

(5) Before building permits are issued for any one or all of said lots, they shall be provided an all-weather access.

(6) No land in the subdivision will be dedicated to public use.

(7) The subdivision has been approved by the department of health and environmental sciences where such approval is required by state law.

(8) Any other additional requirements established by the council.

(Prior Code, § 14.10.020)

Sec. 36-187. Approved subdivision.

Approved minor subdivisions shall be certified by the board and town council and returned to the applicant for filing with the county clerk and recorder.
(Prior Code, § 14.10.030)

Sec. 36-188. Disapproved subdivision.

Disapproved minor subdivisions shall be returned to the applicant with the reasons therefor in writing.
(Prior Code, § 14.10.040)

Sec. 36-189. Resubmission of subdivision.

A resubmission of a minor subdivision may be accepted by the board if the corrections are made which were the reasons for the first rejection. The second application will be subject to all applicable fees.
(Prior Code, § 14.10.050)

Chapter 37

RESERVED

Chapter 38

TRAFFIC AND VEHICLES*

Article I. In General

Article II. General Rules of Vehicle Operation

Article III. Standing or Parking

Division 1. Generally

Division 2. Passenger and Freight Loading Zones

***State law references**—Traffic generally, MCA title 61; powers of local authorities, MCA 61-12-101, 61-12-102.

ARTICLE I. IN GENERAL

Sec. 38-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Arterial street means any U.S. or state numbered route, controlled access highway, or other major radical or circumferential street or highway designated by local authorities within their respective jurisdictions, as part of a major arterial system or highway.

Park means, when prohibited, the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

Through highway means every highway or portion thereof at the entrances to which vehicular traffic from intersecting roadways is required to stop before entering or crossing the same as when stop signs are erected, as provided in this chapter.
(Prior Code, § 10.28.010)

Sec. 38-2. Traffic laws adopted.

The provisions of MCA title 61 are hereby adopted by this reference and incorporated herein to all intents and purposes as if the same were herein set forth word for word, and figure for figure, as the traffic regulation for the town, and one copy heretofore is to be on file with the town clerk-treasurer and shall be permanently filed by said town clerk-treasurer and shall be open for study, inspection and reference by the public at all reasonable times.
(Prior Code, §§ 10.12.010, 10.12.020)

Sec. 38-3. Penalties for misdemeanor.

(a) It is a misdemeanor for any person to violate any of the provisions of this chapter, unless such violation is by this chapter or any other law of this state declared to be felony.

(b) Every person convicted of a misdemeanor for a violation of this chapter for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than $5.00 nor more than $100.00, or by imprisonment for not more than ten days; for a second conviction within one year thereafter, such person shall be punished by a fine of not less than $25.00 nor more than $200.00, or by imprisonment for not more than 20 days, or by both such fine and imprisonment; upon a third or

subsequent conviction within one year after the first conviction, such person shall be punished by a fine of not less than $50.00, or by imprisonment for not more than six months, or by both fine and imprisonment.

(c) On failure of payment of fines the offender, in cases of a misdemeanor, shall be imprisoned in the city or county jail, and said imprisonment shall be computed upon the basis of $10.00 of said fine for each day of incarceration.
(Prior Code, § 10.28.280)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Secs. 38-4—38-24. Reserved.

ARTICLE II. GENERAL RULES OF VEHICLE OPERATION

Sec. 38-25. Use of radar.

The speed of any motor vehicle may be measured by the use of radio-microwaves or other electrical device.
(Prior Code, § 10.28.160)

State law reference—Use of radar, MCA 61-8-702.

Sec. 38-26. Speed limits in school zones.

(a) Where some special hazard exists that requires lower speed, the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized, shall be lawful, but any speed in excess of the limits specified in this section or established as hereinafter authorized shall be unlawful.

(b) School zones limit. While school is in session, the lawful speed limit in a school zone shall be 15 miles per hour.
(Prior Code, § 10.28.150)

Sec. 38-27. "U" turns in business district.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Authorized emergency vehicles mean vehicles of the fire and police departments, ambulances and other emergency vehicles as may be designated or authorized by the mayor of the town.

Business district means, for the purpose of this section, that portion of Legion Avenue in said town lying between the west boundary line of the intersection of "A" Street and Legion Avenue and the west boundary line of the intersection of Brooke Street and Legion Avenue, and that portion of all streets running into Legion Avenue between "A" Street and Brooke Street, from Legion Avenue to where they intersect with First Street. However, the southern side of Legion Avenue at the intersection at Main Street and Legion Avenue shall be expressly excepted from the provisions of this section.

Intersection means the area embraced within the prolongation or connection of the lateral curblines, or, if none, then the lateral boundary lines of the roadways of two streets which join one another at, or approximately at, right angles.

"*U*" *turn* means the act of turning a vehicle so as to turn in an opposite, or 180-degree direction from that which was being travelled prior to turning, and such shall include turns in an opposite direction when proceeding from a complete stop.

Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a street, highway, or public thoroughfare, except devices moved by human power alone, or used exclusively upon stationary rails or tracks.

(b) "*U*" *turn regulations.* It shall be unlawful for any operator of a motor vehicle to execute a "U" turn within the business district of said town; provided, however, that authorized emergency vehicles, when used upon occasions of actual service or practice, shall be excepted from the provisions of this section.

(c) *Penalties for violation.* Any person violating the provisions of this section shall, upon conviction thereof, be fined in the sum of not less than $3.00 nor more than $50.00 or by imprisonment in the town or county jail for not less than one day nor more than ten days, or both such fine and imprisonment.
(Prior Code, §§ 10.20.010—10.20.030)

State law references—Authority to regulate or prohibit turns, MCA 61-12-101(1)(i); penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 38-28. Stop signs.

(a) *Locations.* The following locations at the following intersections shall be designated as stop streets, and suitable stop signs shall be erected at appropriate places near said locations:

(1) On Stanley Street at the southeast corner of the intersection of Stanley Street and First Street.

(2) On Noble Street at the southeast corner of the intersection of Noble Street and First Street.

(3) On Noble Street at the northwest corner of the intersection of Noble Street and First Street.

(4) On Brooke Street at the southeast corner of the intersection of Brooke Street and First Street.

(5) On Brooke Street at the northwest corner of the intersection of Brooke Street and First Street.

(6) On First Street at the southwest corner of the intersection of First Street and Whitehall Street.

(7) On First Street at the northeast corner of the intersection of First Street and Whitehall Street.

(8) On First Street at the southwest corner of the intersection of First Street and Main Street.

(9) On First Street at the northeast corner of the intersection of First Street and Main Street.

(10) On First Street at the southwest corner of the intersection of First Street and Division Street.

(11) On First Street at the northeast corner of the intersection of First Street and Division Street.

(12) On Jefferson Street at the southeast corner of the intersection of Jefferson Street and First Street.

(13) On Jefferson Street at the northwest corner of the intersection of Jefferson Street and First Street.

(14) On "A" Street at the southeast corner of the intersection "A" Street and First Street.

(15) On "A" Street at the northwest corner of the intersection "A" Street and First Street.

(16) On "B" Street at the southeast corner of the intersection of "B" Street and First Street.

(17) On "C" Street at the southeast corner of the intersection of "C" Street and First Street.

(18) On "C" Street at the northwest corner of the intersection of "C" Street and First Street.

(19) On Second Street at the northeast corner of the intersection of Second Street and Division Street.

(20) On Second Street at the southwest corner of the intersection of Second Street and Division Street.

(21) On Second Street at the northeast corner of the intersection of Second Street and Main Street.

(22) On Second Street at the southwest corner of the intersection of Second Street and Main Street.

(23) On Second Street at the northeast corner of the intersection of Second Street and Whitehall Street.

(24) On Second Street at the southwest corner of the intersection of Second Street and Whitehall Street.

(b) *Power of mayor.* The mayor shall be authorized and empowered to cause to be erected such stop signs at such other intersections within said town as he may deem necessary and proper.

(Prior Code, §§ 10.24.010, 10.24.020)

State law reference—Authority to erect stop signs, MCA 61-12-101(1)(f).

Sec. 38-29. Driving on sidewalks.

It shall be unlawful for any person, firm, company, or corporation to drive or cause to be driven upon, over, or across any public sidewalk within the town any motor vehicle, wagon, buggy, or any horse-drawn vehicle, or any horse or other such animal, except at regular alley and street crossings prepared for ordinary traffic; provided, however, that nothing in this section shall prohibit the driving of such vehicles or animals across said sidewalks where the same have been safely and securely bridged over or covered with substantial timbers or planks in such manner as not to injure said walks in any manner by driving over the same. Any person, firm, company, or corporation found guilty of a violation of this section shall, upon conviction, pay a fine of not less than $1.00 and not more than $50.00 for each and every offense.

(Prior Code, §§ 12.04.010, 12.04.020)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 38-30. Vehicles hauling stones.

No person hauling stones, gravel, bricks, manure, dirt, or refuse shall drop or deposit any part of the same upon any street or alley within the limits of the town.
(Prior Code, § 10.02.010)

Secs. 38-31—38-48. Reserved.

ARTICLE III. STANDING OR PARKING*

DIVISION 1. GENERALLY

Sec. 38-49. Penalties.

(a) Any person convicted of a violation of this article, or violating the terms of a special parking permit, shall be punished by a fine of not less than $20.00 nor more than $500.00, or by imprisonment in the county jail from one to 60 days, or both such fine and imprisonment, provided that if such imposed fine is not paid, it shall be satisfied by the person upon whom it is imposed by imprisonment in the county jail at the rate of one day's imprisonment for each $20.00 of such fine as shall be unpaid.

(b) A special parking permittee who is convicted of a second offense of this article by violating the terms of a special parking permit, shall, in addition to penalties provided in subsection (a) of this section, forfeit the special parking permit, and shall be ineligible to be issued a new special parking permit.
(Prior Code, § 10.16.070; Ord. of 1-17-2008)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 38-50. Power of the mayor.

Mayor empowered to designate areas of no parking, standing or stopping. The mayor is hereby authorized and empowered to designate areas or zones of no parking, standing, or stopping and may provide for the erection of suitable signs and/or designate such zones by providing for the painting of the curb yellow in such zones. Any person stopping, standing, or parking in such zones as the mayor may designate hereunder shall be subject to the punitive provision of this article.
(Prior Code, § 10.16.030; Ord. of 1-17-2008)

*__State law reference__—Authority to regulate standing or parking, MCA 61-12-101(1)(a).

Sec. 38-51. Intersections.

There is to be no parking within 20 feet of an intersection between two streets, or in such a manner as to obstruct the ability to see oncoming traffic from any direction.
(Prior Code, § 10.16.010; Ord. of 1-17-2008)

Sec. 38-52. Alleys.

No person shall park a vehicle in a public alley longer than is necessary to tend to public utility issues or to load or unload vehicles.
(Prior Code, § 10.16.010; Ord. of 1-17-2008)

Sec. 38-53. General time limit.

No vehicle shall be parked or left standing upon the right-of-way of any public street, other than Legion Avenue and Whitehall Streets, in excess of 48 hours, or upon any town property in excess of five days.
(Prior Code, § 10.16.010; Ord. of 1-17-2008)

Sec. 38-54. Limited parking.

(a) *Limited parking.* No person shall park in excess of the time limit as indicated on official signs in such areas as said signs may be placed pursuant to authorization hereunder.

(b) *No parking alongside yellow curbstone.* No person shall park alongside the curb when such curb has been painted yellow, within the zone of such yellow curb.

(c) *Overtime parking.* No person shall park, or otherwise leave a vehicle on Legion Avenue or Whitehall Street, excluding those parked for residential purposes, for a period in excess of 12 consecutive hours at any time.
(Prior Code, § 10.16.010; Ord. of 1-17-2008)

Sec. 38-55. Angle parking.

Vehicles parking on Main Street, between Legion Avenue and First Street West, shall be diagonally parked at an acute angle of not less than 30 degrees nor greater than 60 degrees with the edge of the street.
(Prior Code, § 10.16.011; Ord. of 1-17-2008)

Sec. 38-56. Oversized vehicles.

It shall be unlawful for the operator of any truck and/or trailer having a wheelbase length of greater than 125 inches to park any such vehicle on Legion Avenue between Division Street and Whitehall Street.
(Prior Code, § 10.16.020; Ord. of 1-17-2008)

Sec. 38-57. Prohibitions in specific locations.

There is to be no parking in front of the town fire station, ambulance station, or other emergency service.
(Prior Code, § 10.16.010; Ord. of 1-17-2008)

Sec. 38-58. Parking in residential district.

(a) Within the borders of an officially designated residential district or on the side of any street, which street borders or is within the borders of an officially designated residential district, no person shall allow a motor vehicle that is licensed for highway use, while such vehicle is parked or standing, to:

(1) Operate its refrigeration unit;

(2) Allow its engine to run more than 30 minutes in any 12-hour period; or

(3) Hold a load of five animals or offensively odorous material for more than one hour in any 12-hour period.

(b) No person shall stand or park any truck, truck tractor, semi-trailer, bus, or any vehicle licensed or rated for a GVW of 26,001 pounds or greater, laden or unladen, within the borders of an officially designated residential district or on the side of any street, which street borders or is within the borders of any officially designated residential district.

(c) The provisions of subsection (b) of this section shall not apply to:

(1) Vehicles being actively used in connection with:

a. The construction or repair of a building or other structure;

b. Service calls; or

c. The expeditious loading or unloading of passengers or goods.

(2) School buses.

(3) A truck tractor disconnected from a trailer.

(d) An officially designated residential district is defined in the official development district map referred to in chapter 42.

(e) Special parking permit. A person who meets the following criteria may apply for and receive from the town clerk-treasurer a special parking permit to park a vehicle at a reasonably specific parking location, which would be otherwise prohibited by this section. The person must:

(1) Have continuously maintained a residence within the town for six months preceding the date of the application;

(2) Owned or operated a truck, truck tractor, semi-trailer, bus or any vehicle licensed or rated for a GVW of 26,001 pounds or greater, laden or unladen, for at least the preceding six months; and

(3) Have regularly parked such vehicle at a reasonably specific parking location which was within the borders of an officially designated residential district and which parking location was contiguous or adjacent to the applicant's residence.

(f) The special parking permit will be limited to the specific location where the vehicle has been regularly parked.

(g) The town clerk-treasurer may require the applicant for a special parking permit to provide proof of compliance with the criteria stated in subsection (e) of this section. The town clerk-treasurer may rely upon the statements of local law enforcement for proof of compliance and identification of the regular parking place of an applicant for a special parking permit.
(Prior Code, §§ 10.16.040, 10.16.050; Ord. of 1-17-2008)

Secs. 38-59—38-89. Reserved.

DIVISION 2. PASSENGER AND FREIGHT LOADING ZONES

Sec. 38-90. Penalties.

Every person who shall violate the provisions of sections 38-92 through 38-95 shall be deemed guilty of a misdemeanor, and upon first conviction thereof, shall be punished by a fine of not less than $5.00 nor more than $10.00; and on a second conviction thereof within one year, shall be punished by a fine of not less than $10.00 nor more than $20.00; and on a third or subsequent conviction within one year, shall be punished by a fine of not less than $20.00 nor more than $50.00.
(Prior Code, § 10.18.050; Ord. of 6-7-1982)

Sec. 38-91. Removal of unauthorized vehicles.

Any vehicle which is unlawfully parked in a properly designated loading zone area as defined in this chapter, may be removed from such loading zone by a commercial towing vehicle summoned by the town marshal. All costs for the removal and storage of the vehicles shall be paid by the registered owner.
(Prior Code, § 10.18.060; Ord. of 6-7-1982)

Sec. 38-92. Designation of passenger and freight loading zones.

The town marshal shall have authority to determine the location of passenger and freight loading zones, and may cause to be erected and maintained, appropriate signs indicating the same.
(Prior Code, § 10.18.010; Ord. of 6-7-1982)

Sec. 38-93. Permits for parking and loading zones.

Any person desiring a parking or loading zone permit shall make written application to the town marshal, which shall state the location of the desired zone, the number of passenger vehicle parking spaces in the proposed zone, and the business hours during which the zone shall be used. Upon the approval of the application by the town council, the town clerk-treasurer shall issue the permit upon payment by the applicant of an annual service and maintenance fee, the amount of which shall be fixed from time to time by the town council. All permits granted hereunder shall expire on December 31 of the year of issuance. The town council shall have the right to deny any request for a permit or to cancel or suspend any permit previously granted. The town marshal may grant a permit without charge to any town or county official engaged in the discharge of official duties.
(Prior Code, § 10.18.020; Ord. of 6-7-1982)

Sec. 38-94. Stopping, standing, parking in passenger loading zones.

No person shall stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in a place marked as a passenger loading zone, and then only for a period not to exceed three minutes.
(Prior Code, § 10.18.030; Ord. of 6-7-1982)

Sec. 38-95. Parking in freight loading zone.

(a) No person shall stop, stand, or park a vehicle for any purpose other than for the expeditious unloading and delivery or pickup and loading of materials in a place marked as a freight loading zone.

(b) The driver of a passenger vehicle may stop temporarily at a place marked as a freight loading zone for the purpose of, and while actually engaged in, loading or unloading passengers when such stopping does not cause interference with any motor vehicle used for the transportation of materials which is waiting to enter or about to enter said zone.
(Prior Code, § 10.18.040; Ord. of 6-7-1982)

Chapter 39

RESERVED

Chapter 40

UTILITIES*

Article I. In General

Secs. 40-1—40-18. Reserved.

Article II. Water System

Division 1. Generally

*State law references—Municipal utility services, MCA 7-13-101 et seq.; general provisions pertaining to municipal utility services, MCA 7-13-4101 et seq.

Division 2. Wellhead Protection

Division 3. Service Pipes

Article III. Sewer System

Division 1. Generally

Division 2. Sewer Use

Division 3. Installation and Connection Charges

Division 4. Collection of Sewer User Charges

ARTICLE I. IN GENERAL

Secs. 40-1—40-18. Reserved.

ARTICLE II. WATER SYSTEM*

DIVISION 1. GENERALLY

Sec. 40-19. Purpose.

The general purposes of this article are to encourage the good management of the water system owned by the town, to promote conservation of natural resources through the use of water meters, and to generate sufficient revenue to pay all costs for the operation and maintenance of the complete water system. The specific purpose of this article is to generally amend and revise the existing water ordinance of the town. (Prior Code, § 4.00.010; Ord. of 11-29-1995)

Sec. 40-20. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aquifer means any underground geological structure or formation which is capable of yielding water, or is capable of recharge.

Base assessment unit means the minimum assessment charged to each water user who has either a meter on the user's premises or a meter pit unit outside the user's premises. A base assessment rate is established upon the sum of the total annual water fund indebtedness, the system's annual depreciation, and the amount budgeted annually for reserves, divided by 12, which results in a total monthly base rate cost. The total monthly base rate cost is then divided by the number of volume ratio units, to produce an individual base rate.

Contractor means a builder who contracts to supply materials or do work.

Main line means the primary line of which the smaller lines to the water user come off.

Meter pit means the container to be placed in the ground in which a water meter is positioned. Meter pits are used when no other location for a meter is feasible.

***State law reference**—Municipal sewage and/or water systems, MCA 7-13-4301 et seq.

Nonconforming taps mean taps which supply more than one house, building, dwelling, or structure.

Remote means the device which shows the amount of water measured.

Service line means the water line which carries water from the main line to the user's house.

Shut off, curb box, and *curb stop* mean the valve placed at the property line or curbline which shuts off the portion of the service going in to an individual dwelling.

Sprinkling means the watering of any outside garden or lawn by means of sprinklers or other devices.

Sprinkling hours means that portion of each day between the hours of 5:00 a.m. and 10:00 p.m.

Superintendent means the superintendent of water and wastewater facilities and wastewater treatment works, and of water pollution control of the town or an authorized deputy, agent, or representative.

Tapping means the procedure in which a service line is connected into the main line.

Variable rate unit means the unit charged for each gallon of water used. The variable rate is calculated by dividing the annual sum of the operating and maintenance costs by the total number of gallons pumped per year.

Water committee means the water and sewer committee.

Water user means a user who is connected to the public water system.

Wellhead means the source of a spring of water or other supply of water.
(Prior Code, § 4.00.000; Ord. of 11-29-1995)

Sec. 40-21. Appoint water department and its officers.

A department of the town government is hereby established to be designated as a water department, which shall be under the management of the mayor. The mayor shall appoint, with the consent of the town council, all officers of said water department. Their salaries shall be recommended by the mayor and set by the town council.
(Prior Code, § 4.00.020; Ord. of 11-29-1995)

Sec. 40-22. Water and sewer committee.

Following each mayoral election, there shall be appointed by the mayor, with the consent of the town council, a committee of three councilmembers and two residents who will serve for the ensuing term, and shall be known as the committee on water and sewer.
(Prior Code, § 4.00.030; Ord. of 11-29-1995)

Sec. 40-23. Duties of the water and sewer committee.

The water and sewer committee shall review matters related to the maintenance, improvement, and operation of the water system, and make recommendations to the town council.
(Prior Code, § 4.00.040; Ord. of 11-29-1995)

Sec. 40-24. Duties and appointment of the superintendent.

The water and sewer superintendent shall be appointed as is referenced in the ordinance from which this article is derived, and shall obtain the authority and duties spelled out in said ordinance.
(Prior Code, § 4.00.050; Ord. of 11-29-1995)

Sec. 40-25. Duties of the utility/deputy clerk.

(a) It is the duty of the utility/deputy clerk under the direction of the town clerk-treasurer, to collect all water fees when due and payable, and to keep correct and true the book of accounts showing a true and complete status of each individual water user's account.

(b) It shall be the duty of the town utility/deputy clerk under the direction of the town clerk-treasurer to have charge of the clerical work of the water department and keep sufficient books at all times to show the true state of the business of the department. The clerk shall prepare and forward bills of water fees due to all users on the first business day of each month, along with other notices that may from time to time be required in the interest of the department. The utility/deputy clerk shall be required to perform other duties that shall be required by the town clerk-treasurer, mayor, or town council, when in session and acting as a whole.
(Prior Code, § 4.00.060; Ord. of 11-29-1995)

Sec. 40-26. Disposition; part of contract.

The rules, regulations and water rates of this article shall be considered a part of the contract with each water user who is supplied water through the water system of the

town and each water user taking water shall be considered to express their consent to be bound by the rules and regulations. When in violation, water shall be shut off from the building or other place of such violation, and shall not again be turned on, except by order of the superintendent of the water department, or his duly authorized agent, and upon the payment established by resolution. Failure to know the rules shall not excuse anyone from penalty of infringement.
(Prior Code, § 4.00.070; Ord. of 11-29-1995)

Sec. 40-27. Water enterprise fund.

There shall be an account kept by the town clerk-treasurer known as the water enterprise fund and all receipts of the town clerk-treasurer arising from the sale of water work bonds, the collection of water rates, the taxation for water purposes and operating such works, or the sale of such property or material connected with the management or operation of the water works, or any appropriation made by the town council for the purpose of maintenance, construction or extension of the water works shall be recorded in this fund.
(Prior Code, § 4.00.080; Ord. of 11-29-1995)

Sec. 40-28. Water rates.

(a) A variable rate structure shall be used to charge all water users for their water. The rate structure shall have two components:

(1) The base rate; and

(2) The variable rate.

(b) One monthly base unit shall be charged for each meter servicing the premises of each water user. The base unit is a minimum charge. The base rate shall be set by resolution and shall vary depending upon the size of the service line.

(c) A variable rate shall be charged for each gallon of water used. The variable rate shall be set by resolution.
(Prior Code, § 4.00.090; Ord. of 11-29-1995)

State law reference—Charges authorized, MCA 7-13-4304 et seq.

Sec. 40-29. Water connection fees.

In addition to the charges mentioned in section 40-28 and any and all charges provided by law:

(1) Before any potential water user shall be connected to the water line of the town, payment shall be made to the town clerk-treasurer in the sum established by resolution for each connection.

(2) Before any water user shall receive water from the water line, the user shall pay to the town clerk-treasurer a water tapping charge. The water tapping charge shall be computed by multiplying the hourly wage of the water superintendent or other authorized personnel as of the date of the connection, by the total time expended by said personnel in making connection.

(3) A charge in the amount established by resolution shall be made for turning on water, previously turned off for nonpayment or any other purpose, when the water has been turned off by order and authority of the water department.

(4) A fee for sampling water from an individual service line at the request of the owner shall be charged. The fee shall be as established by resolution, plus the cost of the analysis. If it is found that the sampling results show contamination, and if that contamination is within the town's complete system, the town will incur the cost of the fee and sampling.

(Prior Code, § 4.00.100; Ord. of 11-29-1995)

State law reference—Charges authorized, MCA 7-13-4304 et seq.

Sec. 40-30. Water payment rules.

Payment rules and regulations are as follows:

(1) Owners of property served by the town water system shall be held liable for all water service charges. All bills will remain in the property owner's name. Payments will be accepted from tenants, but that will not relieve the owner from liability if the tenant becomes delinquent.

(2) All accounts are due and payable on the tenth day of each month for water consumed in the previous month.

(3) All owners whose accounts are 30 days or more past due will be served a shut-off notice. If payment is not received within five days, all services will be suspended. A fee in the amount established by resolution will be charged for reconnection.

(Prior Code, § 4.00.110; Ord. of 11-29-1995)

Sec. 40-31. One tap per dwelling.

Not more than one house, building, dwelling, or structure shall be supplied from one tap.

(Prior Code, § 4.00.120; Ord. of 11-29-1995)

Sec. 40-32. Administration.

(a) Every person desiring a supply of water shall make application therefor to the town office. The application shall be submitted to the water and sewer superintendent for approval.

(b) Conforming uses. Upon the submission of the application for a permit for water for a conforming use, the water superintendent shall review the application and advise the town clerk-treasurer on issuance of a permit.

(1) A permit for a conforming use may be issued if it is clearly demonstrated by the application that all ordinances set forth in this article and related plumbing codes are observed.

(2) If the town water superintendent has any questions regarding the conformance of the proposed permit, the application may be referred by the town clerk-treasurer to the water and sewer committee for review. If the water and sewer committee finds the proposed application to be a conforming use, the application shall be returned to the town clerk-treasurer for issuance of a water permit.

(c) Nonconforming uses. When the water superintendent determines that a water permit application is for a nonconforming use, the superintendent shall request the application is submitted to the water and sewer committee for its review. The water and sewer committee shall review the permit and make a recommendation to the town council.

(d) Upon the town council's approval of the application, and payment of the necessary fees by the applicant, the town clerk-treasurer shall issue a water permit.
(Prior Code, § 4.00.130; Ord. of 11-29-1995)

Sec. 40-33. Nonconforming taps existing before January 10, 1996 (grandfather statement).

(a) Nonconforming taps which have been in continual existence since December 14, 1994, the date of the amended Regulation of Water Use Ordinance, are excepted from the rules and regulations set forth in this article, except for payment of water use, or provided that a public nuisance, health hazard, or safety hazard does not exist.

(b) Upon transfer of grandfathered property, the new property owner shall install or have installed a new service line to the property that satisfies the conforming use provisions of this article.
(Prior Code, § 4.00.140; Ord. of 11-29-1995)

Sec. 40-34. Nonconforming taps that cannot be separately metered.

Where two or more parties have pre-existing January 10, 1996 nonconforming taps which are supplied from one service line and cannot be separately metered, it shall be mandatory that a separate water line be installed in the dwelling that does not have the shut off.
(Prior Code, § 4.00.150; Ord. of 11-29-1995)

Sec. 40-35. Connections for fire protection.

Every person desiring to connect with the street main for free use of water for fire purposes only shall make application therefor in the town office. Said application shall be submitted to the town council for its consideration. Approval shall be based upon whether or not the existing water distribution system will be able to support installation of such main and hydrant. If approved, such connection shall be made at the applicant's expense.
(Prior Code, § 4.00.160; Ord. of 11-29-1995)

Sec. 40-36. Installation of dual check valves.

All house boilers shall be constructed with a dual check with test ports at the top inlet pipe to be rated as defined in the plumbing code.
(Prior Code, § 4.00.170; Ord. of 11-29-1995)

Sec. 40-37. Connection regulations.

(a) An application for a permit to introduce water service to any premises shall be made and signed by the owner of the premises and approved by the water superintendent or other authorized agent of the town. Any use of water during construction will be billed to the property owner.

(b) No person, firm, or corporation shall dig up or excavate any portion or part of any street or alley within the town for the purpose of repairing or laying service pipes for water supply without first filing with the town clerk-treasurer a written application for a permit to do the work. All applications for water must be made at the clerk's office.

(1) As in section 34-32, before any excavation work is started in the town, the individual, persons, or corporation performing said excavation shall provide the town with an acceptable broad form liability insurance policy, covering excavation, with minimum limits of $100,000.00/$300,000.00 for bodily injury, and $100,000.00 for property damage.

(2) All contractors shall restore the streets, alleys, sidewalks, and pavements over any pipe laid, and fill all excavations made by the contractor so as to leave the sidewalks, streets, alleys and pavements in as good a condition and state as the contractor found them, and keep and maintain in good repair to the satisfaction of the superintendent for the period of one year after the performance of any work. The contractor will use only such material as specified in these rules and regulations, and will do and perform any and all work in the manner specified by the superintendent. The contractor will pay all fines imposed for a violation of any rule or regulation adopted by the town during the term of this contract.

(c) The charges for tapping and installing service to curb, and the cost of any materials supplied by the town, shall be paid by the property owner at the time of providing water.

(d) A curb cock box shall be placed on each service one foot off of the property line, the cover to be level with the sidewalk or ground, or unless otherwise approved.

(e) A report shall be made to the town clerk-treasurer's office of removal of covers on curb cock boxes to prevent rocks and refuse from filling them up and thus prevent them from being used. Refusal or neglect of the owner to provide said box and keep it in repair shall give water department employees the right to clean the curb cock box and charge the actual expense to the water user.

(f) All water mains in the town shall be tapped in accordance with the latest plumbing codes and shall be done by authorized persons from the town's water department only. The curb cock, extension, service box, water service box, cover and all other equipment used in making the connections to the mains, shall be in accordance with specifications spelled out in section 40-43.

(g) The town water department shall sell at cost, to town residents only, water materials such as pipe, stop boxes, stop cocks, curb cocks, check and waste valves of a type specified in section 40-43, such supplies to be used for new or replacement water lines.

(h) Applicants for a new water service shall be charged for the actual distance from the main to the curbline for all service pipes and trenching. The town will oversee all repairs and maintenance of the water line from the main to the property line.
(Prior Code, § 4.00.180; Ord. of 11-29-1995)

Sec. 40-38. Water not to be turned on except upon written order of superintendent.

The water shall not be turned on in any facility or service pipe except by written order of the superintendent of the water department, and not until after the applicant has fully complied with every requirement of this article.
(Prior Code, § 4.00.190; Ord. of 11-29-1995)

Sec. 40-39. Use of water during a fire.

No person shall use any water for irrigation or sprinkling during the progress of any fire in the town, and all irrigation or sprinkling, inclusive of underground sprinkling systems, shall be immediately stopped when the fire alarm is sounded in any part of the town, and shall not be activated again until the fire has been extinguished.
(Prior Code, § 4.00.200; Ord. of 11-29-1995)

Sec. 40-40. Right to shut off water.

The town reserves the right to shut off the supply of water at any time, in spite of any permit granted or regulation to the contrary. Reasonable notice of shut off will be given when possible.
(Prior Code, § 4.00.210; Ord. of 11-29-1995)

Sec. 40-41. Town to be free from claims and demands.

All persons taking water from the town's water system shall keep their own service pipes in good repair and protected from frost at their own risk and expense, and it is stipulated by the town that no claims or demands shall be made by any consumer against it by reason of the breaking of any service pipe, meter, or from any cause involving the supply of water.
(Prior Code, § 4.00.220; Ord. of 11-29-1995)

Sec. 40-42. Fire hydrant opened.

No fire hydrant shall be opened except by authorized personnel of the town water department or members of the town fire department.
(Prior Code, § 4.00.230; Ord. of 11-29-1995)

Sec. 40-43. Water pipe specifications.

From and after November 29, 1995, all new service pipes for water supply from the water mains to any property shall not be less than three-quarters of an inch. All

material is to be of Type "K" soft copper with no joints from corp cock to curb cock, or polybutylene (PB) pressure pipe with AWWA C902 markings, with a PC Class of 200 PSI.
(Prior Code, § 4.02.240; Ord. of 11-29-1995)

Sec. 40-44. Mandatory meters and placement of meters.

A water meter shall be installed upon the service pipe in the dwelling of each water consumer and each business. Meters shall be placed in the basement, where practical. When this is not possible or not convenient, placement for the meter shall be selected by the water superintendent or other authorized water personnel. If a water meter cannot be installed within a newly constructed building on the premises, or the property owner does not allow a meter in the owner's building, a meter pit in which the meter will be located shall be installed at the consumer's expense, at a location on the premises to be determined by the water superintendent or other authorized water personnel.
(Prior Code, § 4.00.250; Ord. of 11-29-1995)

Sec. 40-45. Property owner responsible for water meter damage.

The property owner shall be responsible for damage resulting from neglect, carelessness, freezing, or tampering with meters. If the meter is not operating properly, the property owner shall notify the water superintendent.
(Prior Code, § 4.00.260; Ord. of 11-29-1995)

Sec. 40-46. Ownership and cost of meters.

All meters are the property of the town. For new construction, meters shall be supplied by the town. The cost of the meter shall be incurred by the property owner.
(Prior Code, § 4.00.270; Ord. of 11-29-1995)

Sec. 40-47. Water meter cutoff.

All meters installed shall be provided with a cutoff or valve on each side of the meter so that any meter may be removed for the purpose of testing, and a bypass placed in the service pipe for the purpose of supplying the consumer with water during the testing of said meter.
(Prior Code, § 4.03.280; Ord. of 11-29-1995)

Sec. 40-48. Dual checks with test ports.

All buildings shall have a dual check with test ports installed on the consumer's side of the meters.
(Prior Code, § 4.00.290; Ord. of 11-29-1995)

Sec. 40-49. Tampering and draining hydrants.

(a) *Unlawful acts.* It shall be unlawful for any person at any time to:

(1) Tamper with, use, or in any way damage fire hydrants, without the consent of the town superintendent of water works, within the jurisdictional area of the town volunteer fire department.

(2) Fail to properly drain the hydrant used, or see that said hydrant is drained or properly pumped out, after using a fire hydrant.

(b) *Volunteer firefighters excluded.* The provisions of this section do not cover volunteer firefighters in the performance of their duties.

(c) *Penalties.* Any person violating this section, or any part thereof, or failing to comply with any of its provisions, upon conviction thereof, shall be fined up to a maximum of $500.00.

(Prior Code, §§ 4.04.010—4.04.030; Ord. of 2-27-1978)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Secs. 40-50—40-71. Reserved.

DIVISION 2. WELLHEAD PROTECTION

Sec. 40-72. Wellhead protection policy.

It is the policy of the town to provide a healthy and safe water supply, and to eliminate any potential threats of contamination or health threats to the municipal water system. In recognition of the town's dependence on well water, it is also the policy of the town to eliminate threats to the aquifer whenever possible, and protect, maintain, and improve the town's community water supply for public and domestic use.

(Prior Code, § 4.00.300; Ord. of 11-29-1995)

Sec. 40-73. Wellhead protection committee.

(a) The town hereby establishes a wellhead protection committee for the purpose of ensuring that every measure is taken to protect the water supply for the town, to update the wellhead policy as wellhead protection laws change, and to implement long-term goals with time factors.

(b) Membership. The wellhead protection committee shall consist of three members:

(1) The water superintendent;

(2) Chair of the water and sewer committee; and

(3) A town resident who is to be appointed by the mayor, with the consent of the council.

(Prior Code, §§ 4.00.310, 4.00.320; Ord. of 11-29-1995)

Sec. 40-74. Wellhead sites; unlawful acts.

The following acts are unlawful:

(1) To enter any well house without authorization;

(2) To operate any fuel station within 500 feet of the town's existing wells or new well locations;

(3) To store any underground or above-ground fuel storage tanks within 500 feet of the town's existing wells or new well locations;

(4) To create, store, or produce any toxic waste within 500 feet of the town's existing wells or new well locations;

(5) To park any vehicle with fuel, chemicals, fertilizer, or any waste deemed adverse to the water supply within 500 feet of the town's existing wells or new well locations.

(6) Cross connections between private wells and the town's water system are prohibited.

(Prior Code, § 4.00.330; Ord. of 11-29-1995)

Sec. 40-75. Aquifers—Unlawful acts.

The following acts are unlawful:

(1) To drill a new well within the limits of the town except for the town or irrigation purposes. Wells drilled for irrigation shall be permitted and inspected by the water superintendent and drilled by a licensed driller.

(2) To inject any chemicals or chlorine into any well or wellheads or aquifers without the authorization of the town's water superintendent or the water quality bureau.

(Prior Code, § 4.00.340; Ord. of 11-29-1995)

Sec. 40-76. Same—Mandated acts.

The following acts are mandated:

(1) Owners of existing wells in the town shall have their wells inspected annually by the water superintendent or other authorized water department personnel for

cross connections. The utility/deputy clerk shall send a letter of confirmation following the inspection. Once ownership of the property is transferred, a well for potable use is prohibited.

(2) Owners of existing wells which are no longer in service are required to have their wells inspected by the water superintendent or other authorized water department personnel to ensure their wells have been abandoned as per MCA 7-13-4401. The utility/deputy clerk shall send a letter of confirmation following the inspection.

(Prior Code, § 4.00.350; Ord. of 11-29-1995)

Sec. 40-77. Pre-September 11, 1995 existing violations.

Violations such as fuel stations, underground or above-ground fuel storage tanks, or other structures existing prior to September 11, 1995, the date of the approval of the wellhead protection policy, are excepted from section 40-74(2) through (6), entitled unlawful acts.

(Prior Code, § 4.00.360; Ord. of 11-29-1995)

Sec. 40-78. Pre-existing hazards which are abandoned or destroyed.

Any pre-existing hazards that existed prior to September 11, 1995, that have ceased by discontinuance or abandonment of the structure, building, or land use for a period of one year shall conform to the provisions of this division.

(Prior Code, § 4.00.370; Ord. of 11-29-1995)

Secs. 40-79—40-99. Reserved.

DIVISION 3. SERVICE PIPES

Sec. 40-100. Water pipe specifications.

Water pipes shall meet the following specifications:

(1) All new service pipes for water supply from the water mains to any property shall not be less than three-quarters of an inch and shall be of good, sound brass, copper, lead or other approved nonrusting materials, and said approved nonrusting pipe shall be installed from said water main to the curb cock and service box.

(2) Sewer and water shall be in separate trenches ten feet apart.

(Prior Code, § 4.02.010)

Sec. 40-101. Curb cocks.

All curb cocks and service boxes shall be installed on the street side of, but at a distance no greater than six feet from, the property owner's lot line.
(Prior Code, § 4.02.020)

Sec. 40-102. Repairs and replacements.

All repairs to, or replacements of, any existing service pipes for water supply, and all other service pipes for water supply hereinafter laid under any street within the limits of the town, shall be of new materials and as specified in sections 40-100 and 40-101.
(Prior Code, § 4.02.030)

Sec. 40-103. Penalties for violation.

Any person, firm, or corporation found guilty of any violation of any of the provisions of this division shall be refused water supply by the town, until all the provisions of this division have been complied with.
(Prior Code, § 4.02.040)

Secs. 40-104—40-134. Reserved.

ARTICLE III. SEWER SYSTEM*

DIVISION 1. GENERALLY

Secs. 40-135—40-151. Reserved.

DIVISION 2. SEWER USE

Sec. 40-152. Penalties.

(a) Any person found to be violating any provision of this division, except section 40-158, 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.

*State law references—Municipal sewage and/or water systems, MCA 7-13-4301 et seq.; public sewer systems, MCA 7-13-4301 et seq.

(b) 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 fined in an amount not exceeding $350.00 for each violation. Each day in which any violation shall continue shall be deemed a separate offense.

(c) Any person violating any of the provisions of this division shall become liable to the town for any expense, loss, or damage occasioned by the town by any reason of such violation.

(Prior Code, § 4.08.090)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Sec. 40-153. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter.

Building drain means 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 (1.5 meters) outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal, also called house connections.

Combined sewer means a sewer intended to receive both wastewater and stormwater or surface water.

Easement means an acquired legal right for the specific use of land owned by others.

Engineer means the person designated with that title by the town or a licensed professional civil or sanitary engineer authorized by the town council to act as the town's engineer.

Floatable oil means 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 means animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

Hearing board means that board appointed according to the provisions of section 40-160.

Industrial user means:

(1) Any user of publicly-owned treatment works which discharges more than the equivalent of 25,000 gallons per day (GPD) of sanitary wastes and which is identified in the Standard Industrial Classifications Manual, 1972, Office of Managements and Budgets, as amended and supplemented, under one of the following divisions:

Division A: Agriculture, forestry and fishing
Division B: Mining
Division D: Manufacturing
Division E: Transportation, communications, electric, gas and sanitary services
Division I: Services

(2) Any user of a publicly-owned treatment works which discharges wastewater to the treatment works, which contains toxic pollutants 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, or to injure or interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates a hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

Infiltration means water, other than wastewater, that enters a sewerage system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

Infiltration/inflow means the total quantity of water from both infiltration and inflow without distinguishing the source.

Inflow means water, other than wastewater, that enters a sewerage system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catchbasins, cooling towers, stormwaters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Interceptor sewer means a sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility.

Lateral sewer means a sewer that discharges into another sewer and has no other common sewer tributary to it.

Natural outlet means any outlet, including storm sewers, and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface water or groundwater.

Outfall sewer means a sewer that receives wastewater from a collecting system or from a treatment plant and carries it to a final discharge point.

Person means any individual, firm, company, association, society, corporation, or group.

pH means 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 means 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 (1.27 centimeters) in any dimension.

Public sewer means a common sewer controlled by a governmental agency or public utility.

Residential user means a user who occupies a singular place of domicile for his home and residence. A singular place of domicile means one apartment, one trailer, one mobile home, or one unit of any structure occupied by one family as a residence and home.

Sanitary sewer means a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with minor quantities of groundwater, stormwater, and surface water that are not admitted intentionally.

Septic tank means any properly sized watertight receptacle which receives the discharge of sewage or wastewater, and is designed and constructed to retain solids, digest organic matter through a period of detention, and allow liquids to discharge into the soil outside of the tank through a system of open joint piping or from a seepage pit meeting the requirements of the uniform plumbing code.

Septic tank wastes means that portion of the tank contents, including solids, liquids, and combinations thereof, that is periodically pumped and disposed of.

Sewage means the spent water of a community. See also *Wastewater.*

Sewage collection system means each and all of the common lateral sewers, within a publicly-owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewaters from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. The facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent, are specifically excluded from the definition, with the exception of pumping units and pressurized lines for individual structures or groups of structures, when such units are owned and maintained by the town.

Sewer means a pipe or conduit that carries wastewater or drainage water.

Slug means any discharge of water or wastewater which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes, more than five times the average 24-hour concentration of flows during normal operations, and shall adversely affect the collection system and/or performance of the wastewater treatment works.

Storm drain or *storm sewer* means a drain or sewer for conveying water, groundwater, sub-surface water, or unpolluted water from any source.

Superintendent means the superintendent of wastewater facilities, and/or of wastewater treatment works, and/or of water pollution control of the town or his authorized deputy, agent, or representative.

Suspended solids means total suspended matter (TSS) that either floats on the surface of, or is in suspension in, water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater, and referred to as nonfilterable residue.

Unpolluted water means water of quality equal to or better than the effluent criteria in effect, or water that would not cause violation of receiving water quality standards, and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

Wastewater means the spent water of a community. From the standpoint of source, wastewater may be a combination of the liquid and water-carried wastes from resi-

dences, commercial buildings, industrial plants, and self-contained motor homes/ mobile trailers and institutions, together with any groundwater, surface water, and stormwater that may be present.

Wastewater facilities mean the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes, and dispose of the effluent.

Wastewater treatment works means an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. The term "wastewater treatment works" is sometimes used as synonymous with "waste treatment plant," "wastewater treatment facility," "wastewater treatment plant," or "water pollution control plant."

Watercourse means a neutral or artificial channel for the passage of water, either continuously or intermittently.
(Prior Code, § 4.08.010)

Sec. 40-154. Use of public sewers required.

(a) It shall be unlawful for any person to place, deposit, or permit to be placed or 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 any other objectionable waste.

(b) 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 division.

(c) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, dumping station for transient vehicles, or other facility intended or used for the disposal of wastewater.

(d) The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes situated within the town and abutting on any streets, 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 division, within 30 days after the date of official notice to do so, provided that said public sewer is within 200 feet of the property line.
(Prior Code, § 4.08.020)

Sec. 40-155. Private wastewater disposal.

(a) Where a public sanitary or combined sewer is not available under the provisions of section 40-154(d), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this division.

(b) Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the superintendent. The application for such a 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. A permit and inspection fee in the amount established by resolution shall be paid to the town at the time the application is filed. In addition, the applicant shall pay an hourly rate set by the town council for the review and approval of the permit.

(c) 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 24 hours of the receipt of notice by the superintendent.

(d) The type, capacities, location and layout of a private wastewater disposal system shall comply with all recommendations of the state department of public health. 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 43,560 square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(e) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in subsection (d) of this section, a direct connection shall be made to the public sewer within 60 days in compliance with this division, and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material at the owner's expense.

(f) 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 as approved by the county sanitarian.

(g) No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the county health officer or the state board of health.
(Prior Code, § 4.08.030)

Sec. 40-156. Sanitary sewers, building sewers and connections.

(a) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the superintendent.

(b) There shall be two classes of building sewer permits:

(1) For residential and commercial service; and

(2) For service to establishments producing industrial wastes.

In either case, the owner or his agent shall make application on a special form furnished by the town. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the superintendent. A permit and inspection fee in the amount established by resolution shall be paid to the town at the time the application is filed. Such fees will be reviewed on a periodic basis and adjusted as necessary by the town council.

(c) All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the building 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) 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.

(e) 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 division.

(f) The size, slope, alignment, and materials of construction of all sanitary sewers, including building sewers, and the methods to be used in excavation, placing of pipe, jointing, testing, and back-filling 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. 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) 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) No person shall make connection of roof downspouts, foundation drains, areaway drains, cellar sump pumps 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 for purposes of disposal of polluted surface drainage.

(i) 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 state, 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) The applicant for the building sewer permit shall notify the superintendent at least five days in advance of inspection and connection to the public sewer. The connection and testing shall be inspected by the superintendent or his representative.

(k) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the town.
(Prior Code, § 4.08.040)

Sec. 40-157. Use of public sewers.

(a) 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 (from air conditioning) to any sewer.

(b) Stormwater and all other drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the superintendent and other regulatory agencies. 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) No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:

(1) Any gasoline, benzene, naphtha, fuel, oil, or other flammable or explosive liquid, solid, or gas.

(2) 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, 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. Each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the town treatment works shall pay for such incurred costs.

(3) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the wastewater works.

(4) 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.

(5) Septic tank wastes.

(d) The following described substances, materials, waters, or waste 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, wastewater treatment process or equipment; will not have an adverse effect on the receiving stream; or will not otherwise endanger lives, limb, or 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 his opinion as to the acceptability, the superintendent will give consideration

to such factors as the quantity of 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, degree of treatability of the waste in 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) Wastewater having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).

(2) Wastewater containing more than 25 milligrams per liter of petroleum oil, nonbiodegradable cutting oils, or products of mineral origin.

(3) Wastewater from industrial plants containing floatable oils, fat, or grease.

(4) Any garbage that has not been properly shredded (see section 40-153). 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) Any waters or wastes containing arsenic, iron, cadmium, chromium, copper, lead, mercury, zinc and similar objectionable or toxic substances to such a degree that any such material received in the composite wastewater at the wastewater treatment works exceed the limits established by the superintendent for such materials.

(6) Any waters or wastes containing odor-producing substances exceeding limits which may be established by the superintendent.

(7) 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) Quantities of flow, concentration, or both, which constitute a slug as defined herein.

(9) Waters or wastes containing substances which are not amenable to treatment processes employed, or are amenable to treatment only to such a degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving water.

(10) Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interface with the collection system, or create a condition deleterious to structures and treatment processes.

(11) Any water or wastes containing DDT, PBB, PCB, or other carcinogenic compounds to such a degree that any such materials received in the composite wastewater at the wastewater treatment facility exceeds the limits established by the superintendent for such materials.

(e) 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 the existing taxes or sewer service charges under the provisions of division 4 of this article.

(f) 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 (d)(3) 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 shall be located as to be readily and easily accessible for cleaning and inspection. All interceptors must be reviewed and approved by the state department of health and environmental sciences. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal by appropriate means of the captured material, and shall maintain records of the dates, and some means of disposal, which are subject to review by the superintendent. Any removal and hauling of the collected materials not performed by owner personnel must be performed by currently licensed waste disposal firms.

(g) Where pretreatment of flow-equalizing 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) When required by the superintendent, the owner of any property serviced by a building sewer carrying industrial waste or excess flows, BOD, or TSS, 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) The superintendent may require a user of sewer services to provide information needed to determine compliance with this division. 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 quality.

(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 locations.

(6) Details of wastewater pretreatment facilities.

(7) Details of systems to prevent and control the losses of materials through spills to the municipal sewer.

(j) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this division 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, locations, times, duration, and frequencies are to be determined on an individual basis, subject to the approval by the superintendent.

(k) No statement contained in this section 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.

(Prior Code, § 4.08.050)

Sec. 40-158. Interaction with police department.

No person shall purposely or knowingly 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 arrest or citation as provided by law.
(Prior Code, § 4.08.060)

Sec. 40-159. Powers and authority of inspectors.

(a) The superintendent, and other duly 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 division.

(b) 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) 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 section 40-157(h).

(d) 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.
(Prior Code, § 4.08.070)

Sec. 40-160. Hearing board.

(a) 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 division by the superintendent. The cost of the arbitration will be divided equally between the town and the sewer user.

(b) Two members of the board shall be members of the town council appointed by the mayor; two members shall be chosen by the plaintiff and the fifth shall be chosen by the four members previously appointed.
(Prior Code, § 4.08.080)

Secs. 40-161—40-188. Reserved.

DIVISION 3. INSTALLATION AND CONNECTION CHARGES*

Sec. 40-189. Connection regulations.

No person, firm, or corporation shall make any connection from the sewer line or lines of the town to his property, where the service line to said property shall join the sewer line of the town, without having a licensed plumber of the state, or certified person, make such a connection, and the person, firm or corporation making such connection shall be responsible for all costs and expenses in connection therewith.
(Prior Code, § 4.10.010)

Sec. 40-190. Sewer service materials.

(a) All service lines from any property connecting to the sewer line of the town shall be made only with asbestos cement sewer pipe (Class 2400) or PVC plastic sewer pipe (Class 3034 SDR 35 wall thickness), with not less than a four-inch inside diameter. Couplings shall be of Ring-Tite type. All fittings shall be of the same type pipe, manufactured and suited for the type of pipe specified in this subsection, and each fitting shall likewise be fitted with Ring-Tite coupling of the same make and design.

(b) Sewer line connections. All service lines from any property connecting to the sewer line of the town shall be made only of approved inline fittings or saddle "T" or saddle "Y," which shall be watertight.
(Prior Code, § 4.10.015)

*__State law reference__—Charges authorized, MCA 7-13-4304.

Sec. 40-191. Connection fees.

(a) In addition to the charges mentioned in section 40-189 and any and all charges provided by law, before any person, firm, or corporation shall connect to or with the sewer line of the town, he shall pay to the town clerk-treasurer the sum established by resolution for each connection.

(b) In addition to the charges mentioned in section 40-189 and any and all charges provided by law, before any person, firm, or corporation shall discharge into or with the sewer line of the town, he shall pay to the town clerk-treasurer a sewer tapping charge. The sewer tapping charge shall be computed by multiplying the hourly wage of the town water commissioner, as of the date of the connection, by the total time expended by the town water commissioner in making such connection.
(Prior Code, § 4.10.020)

Sec. 40-192. Defining independent user.

Each sewer connection charge shall be separate for each independent user of said sewer on such property, the term "independent user" being construed to mean each separate building or structure or any particular lot, lots, or piece of real property which shall contain separate sewer systems and use such sewer facilities.
(Prior Code, § 4.10.030)

Sec. 40-193. Penalties for violation.

Any violation of this division is hereby prohibited and the same shall be unlawful, and in addition to all other remedies by law available to the town. Any person, firm, or corporation violating any of the provisions of this article, upon conviction thereof, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than $25.00 nor more than $250.00, or by imprisonment of not to exceed 90 days, or by both such fines and imprisonment.
(Prior Code, § 4.10.040)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Secs. 40-194—40-224. Reserved.

DIVISION 4. COLLECTION OF SEWER USER CHARGES

Sec. 40-225. Purpose.

The purpose of this division shall be to generate sufficient revenue to pay all costs for debt retirement, required reserves, and 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, and in accordance with other factors that the town deems appropriate.
(Prior Code, § 4.06.010; Ord. No. 4.06, § 1(4.06.010), 1-10-2011)

Sec. 40-226. Annual operation and maintenance cost.

The town 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, administrative services, necessary modifications, power, sampling, laboratory tests and a reasonable contingency fund.
(Prior Code, § 4.06.020; Ord. No. 4.06, § 2(4.06.020), 1-10-2011)

Sec. 40-227. Pretreatment requirement for high strength waste.

The town will require users with high strength wastes to provide pretreatment prior to discharging wastes to the town's wastewater collection system. High strength wastes are classified as wastes with BOD and/or TSS strengths greater than ten percent higher than normal residential strength wastewater. Normal strength wastes are considered to be 200 ppm BOD and 250 ppm TSS. Costs for pretreatment, including, but not limited to, capital costs, operation and maintenance costs, and compliance testing, shall be borne by the user.
(Prior Code, § 4.06.040; Ord. No. 4.06, § 4(4.06.040), 1-10-2011)

Sec. 40-228. Determining user's wastewater service charge.

The town will review its rates and charges for use and availability of the wastewater system periodically and at least as often as required by law, and depending on the costs for operation and maintenance of the wastewater system, repayment of indebtedness secured by the revenues of the wastewater system, establishing and maintaining appropriate reserves, and other factors, will establish and modify rates and charges in a manner and in accordance with methodologies it deems appropriate, all in accordance with law.
(Prior Code, § 4.06.050; Ord. No. 4.06, § 5(4.06.050), 1-10-2011)

Sec. 40-229. User charge rate schedule.

The town shall implement and modify a fair and reasonable system of rates and charges for users of the wastewater system by resolution of the council, duly adopted after a public hearing, with notice thereof given as required by law.
(Prior Code, § 4.06.070; Ord. No. 4.06, § 5(4.06.070), 1-10-2011)

Sec. 40-230. Failure to pay charges.

Should any user fail to pay the user wastewater service charge within 60 days of the due date, the town may stop the wastewater and water service to the property.
(Prior Code, § 4.06.080)

Sec. 40-231. Review of 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 years and will revise the system as necessary to ensure equity of the service charge system established herein and to ensure that sufficient funds are obtained to adequately operate and maintain the wastewater treatment works. The town shall apply excess revenue 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 town council, such factual information and the town shall 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.
(Prior Code, § 4.06.100)

Sec. 40-232. Wastes prohibited from being discharged into wastewater treatment system.

Each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the town treatment works shall pay for such increased costs.
(Prior Code, § 4.06.120)

Sec. 40-233. Wastewater facilities replacement fund.

A reserve fund called the Wastewater Facilities Replacement Fund is hereby established 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.
(Prior Code, § 4.06.150)

Chapter 41

RESERVED

Chapter 42

ZONING*

Article I. In General

Article II. Administration and Enforcement

Division 1. Generally

Division 2. Development Permit

Article III. Zoning Districts

Article IV. Supplemental Regulations

***State law reference**—Municipal zoning, MCA 76-2-301 et seq.

ARTICLE I. IN GENERAL

Sec. 42-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building means a structure enclosing a space within its walls, and usually, but not necessarily, covered by a roof. A building includes any structure attached to a building, whether or not the attached structure has walls or a roof. For purposes of this chapter, the term "building" does not include bird houses, dog houses, cat pens, and like objects that meet setback requirements.

Structure means any construction, or any production or piece of work artificially built up or composed or parts joined together in some definite manner, including, but not limited to, fences.
(Prior Code, § 11.04.025; Ord. of 5-8-2013)

Sec. 42-2. Title and statement of authority.

This chapter shall be known as the "Whitehall zoning ordinance", in accordance with, and exercising the authority granted to the town, by MCA title 76, chapter 2, part 3 (MCA 76-2-301 et seq.).
(Prior Code, § 11.04.010; Ord. of 5-8-2013)

Sec. 42-3. Purpose.

The general purposes of this chapter are to promote the health, safety and general welfare of the community and to ensure orderly development within the community and jurisdictional area. The specific purposes of this chapter are as follows:

(1) Affirm the existing official development district map for the town.

(2) Generally amend and revise the existing development permit zoning ordinance for the town.

(3) Provide for and establish a combined planning board/board of adjustment.

(4) Regulate and restrict the use and location of buildings, structures and land for residential, commercial and industrial uses.

(Prior Code, § 11.04.020; Ord. of 5-8-2013)

Sec. 42-4. Jurisdiction and incorporation of official development district map.

(a) The zoning jurisdiction of the town is limited to the confines of the corporate limits of the town.

(b) The official development district map, with all notations, references and other information shown on the map, is hereby incorporated by reference and made a part of this chapter and is affirmed as the zoning district boundary map for the town.

(c) The official development district map shall be identified by the signature of the mayor, and bear the seal of the town.

(d) Changes to the district boundaries, as approved by the town council, will be noted along with the dates of the changes.

(e) No unauthorized changes shall be made to the official development district map.

(f) One copy of the official development district map will be filed with the county clerk and recorder.

(g) The official development district map, located in the office of the town clerk-treasurer, will be the final authority as to district boundaries.
(Prior Code, § 11.04.030; Ord. of 5-8-2013)

Secs. 42-5—42-26. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 42-27. Powers reserved to town council.

Having originally availed itself to the powers conferred by MCA title 76, chapter 2, part 3 (MCA 76-2-301 et seq.) by having appointed a zoning commission to recommend the original zoning districts and appropriate regulations, the town, through the town council, reserves to itself the power to amend, modify, change, alter and repeal, or make exceptions to, the original regulations, ordinances, or zoning districts adopted pursuant to MCA title 76, chapter 2, part 3 (MCA 76-2-301 et seq.).
(Prior Code, § 11.04.050; Ord. of 5-8-2013)

Sec. 42-28. Board of adjustments.

The board of adjustments, as provided by MCA 76-2-321, is hereby combined with the town planning board. The combined town planning board/board of adjustments shall have the dual responsibilities of a board of adjustment as provided by MCA 76-2-321, and a city planning board as provided in MCA title 76, chapter 1 (MCA 76-1-101 et seq.). The membership of the combined town planning board/board of adjustment shall be members of the town planning board and shall be determined by the provisions of MCA 76-1-221 and chapter 2, article IV, division 2 of this Code.
(Prior Code, § 11.04.040; Ord. of 5-8-2013)

Sec. 42-29. Penalties.

(a) A cease and desist order will be sent to any individual that begins a building project within the jurisdictional district without obtaining an approved permit or a temporary approval permit from the planning board designee; such individual is subject to a fine of $25.00 for a first offense. Payment of the fine must be made to the town in order for a development permit to be issued to the applicant. If a permit applicant has received permission from a planning board member to begin construction of a building project that is later deemed by either the planning board or the town council to be noncompliant, said permit applicant would be exempt from this fine. Any individual that commits a second or subsequent offense is subject to a fine of $500.00 prior to obtaining a development permit.

(b) Within the jurisdictional limits of this chapter, any owner of land upon which a building, structure, sign, or fence is constructed or used in violation of this chapter, and any builder, contractor, or architect who shall construct or cause to be constructed, any building, structure, sign, or fence in violation of this chapter, may be subject to a fine of not more than $100.00 per violation of this chapter. Each day a building, structure, sign, or fence is maintained in violation of this chapter shall be deemed a separate offense and violation.
(Prior Code, § 11.04.120; Ord. of 5-8-2013)

State law reference—Penalty for ordinance violations, MCA 7-1-111(8), 7-5-109.

Secs. 42-30—42-46. Reserved.

DIVISION 2. DEVELOPMENT PERMIT

Sec. 42-47. Unlawful to build or repair without development permit.

Within the jurisdictional limits of this chapter, it shall be unlawful to erect any building, structure, sign, or fence, or to repair or alter any existing building, structure,

sign, or fence, which repair or alteration affects the outside horizontal dimensions of the building or structure, or the height or dimensions of the fence or sign, or to change the use of any building or land, without having applied for and having received a development permit as provided by this chapter.
(Prior Code, § 11.04.110; Ord. of 5-8-2013)

Sec. 42-48. Administration.

(a) Before any building, structure, sign, or fence is erected or an existing building, structure, sign, or fence is repaired or altered, which repair or alteration affects the outside horizontal dimensions of the building or structure, the height or size of the sign, the height, length and building materials of a fence, or if the use of any building, structure, or land is changed, the owner of the land, by himself or through an agent, shall file with the town clerk-treasurer a written application, giving the intended location of such building, structure, sign, or fence, its dimensions, material, manner of construction, intended use and estimated costs.

(1) *Conforming uses.* Upon the submission to the town clerk-treasurer of a complete development permit application for a conforming use, and the payment of the necessary fee, a development permit shall be forwarded to the planning board for review. If the planning board finds the proposed development to be a conforming use, the application shall be returned to the town clerk-treasurer for issuance of a development permit.

(2) *Nonconforming uses.* Upon the submission to the town clerk-treasurer of a complete development permit application for a nonconforming use, the application will be referred by the town clerk-treasurer to the planning board for review. The planning board shall make a recommendation to the town council as to whether or not the development permit application for a nonconforming use should be approved. Upon town council approval of the application and the payment of the necessary fee by the applicant, the clerk-treasurer shall issue a development permit.

(b) Fees in the amount established by resolution must be paid before a development permit is issued.
(Prior Code, § 11.04.070; Ord. of 5-8-2013)

Sec. 42-49. Review standards for nonconforming uses.

A development permit allowing a nonconforming use to locate within any district may be issued if the following conditions are met:

(1) The traffic circulation pattern is designed to secure a safe and smooth flow.

(2) A sufficient number of off-street parking spaces shall be provided to serve employees, customers and residents.

(3) Industrial uses, storage areas and other uses posing potential hazards to the public shall be enclosed by a fence at least six feet high. All fences constructed, replaced, or repaired must comply with fence guidelines contained in section 42-76(1)b.6.

(4) The land use change does not have a significant adverse effect on the character of the surrounding area.

(5) A two-thirds majority of the property owners within 300 feet of the proposed development approve the proposed development.

(6) The development permit application for a nonconforming use is approved by the town council.

(Prior Code, § 11.04.080; Ord. of 5-8-2013)

Sec. 42-50. Pre-December 14, 1994 nonconforming uses of land and locations of structures (grandfathering statement).

Nonconforming uses of land and locations of structures which have been in continual existence since December 14, 1994, the date of the amended development permit zoning ordinance, are excepted from the rules and regulations set forth in this chapter, provided that a public nuisance, health, or safety hazard does not exist.

(Prior Code, § 11.04.090; Ord. of 5-8-2013)

Sec. 42-51. Treatment nonconforming uses which are abandoned or destroyed.

(a) Any nonconforming use of land, building, structure, or fence, either existing prior to December 24, 1994, or for which a development permit has been issued, that has ceased by discontinuance or abandonment for a period of one year, shall conform to this chapter.

(b) Any nonconforming building or structure which has been destroyed or damaged to the extent of 50 percent or more of its replaced valuation shall thereafter conform to this chapter. Where more than 50 percent of the replaced valuation of the building or structure remains after such damage, such building may be restored to the same nonconforming use as existed before such damage.

(Prior Code, § 11.04.100; Ord. of 5-8-2013)

Secs. 42-52—42-75. Reserved.

ARTICLE III. ZONING DISTRICTS

Sec. 42-76. Zoning districts; permitted uses and location of structures.

The following uses and locations are permitted upon issuance of a conformance development permit by the town after determining that the following specified standards are met:

(1) *Residential district.*

a. The following uses are permitted within the residential district:

1. Single and duplex residential buildings, including manufactured housing as defined in MCA 76-2-302(4).
2. Playgrounds and parks.

b. Residential district standards.

1. *Lot size.* All buildings must be located on a lot no less than 50 feet by 150 feet, or 7,500 square feet.
2. *Setbacks.* Buildings shall be set back a minimum of 25 feet from the front property line, eight feet from a side property line, and five feet from the rear property line. The front property line is defined as that property line which is parallel to the street which determines the address of the property.
3. *Parking.* Every residential property use shall provide at least one off-street parking space for each dwelling unit within the lot boundary. All other uses shall provide sufficient off-street parking to meet the anticipated needs of users.
4. *Drainage.* The site shall be graded, and appropriate culverts or other drainage facilities shall be provided to remove surface run-off in a manner that will not adversely affect adjacent properties or public roads.
5. *Signs.* No more than one sign, not larger than two square feet in size, is allowed per lot. Neon, buzzing, whistling, flashing, or moving signs are not permitted.
6. *Fences.* All fences must comply with the following fence guidelines contained in subsection (1)b.6 of this section:
   (i) All fences will be built on property lines.
   (ii) Side fences facing a street are limited to four feet (48 inches) in height.

(iii) Verification that adjacent property owners have seen the plans for the new fence.

(iv) Back fences are to be no higher than six feet (72 inches).

(v) Front fences are to be no higher than four feet (48 inches).

(vi) Side fences are to be no higher than four feet (48 inches) for the first 25 feet to match setback regulations. Height may be then raised to match the back fence.

(vii) No barbed-wire fences.

(viii) Shrubs or hedges used as fences must be kept trimmed so as not to obstruct sidewalks or alleys. The standard height requirements in subsections (1)(b)6.(iv), (v), and (vi) of this section apply.

(ix) Corner lots. Fences must not obstruct the view from the street for traffic safety concerns.

(x) Posts, if wooden, must be cedar or butt-treated wood.

(xi) Sheet metal may not be used.

(xii) Permit fee in the amount established by resolution is paid and the planning board approves before construction of the fence begins.

(xiii) Fence, if not built on property line, must be maintained (both sides) by the property owner.

(xiv) If a fence is constructed on the property line, a signed agreement by both property owners addressing construction and maintenance is to be filed permanently at the clerk-treasurer's office.

(xv) Dog runs and dog kennels do not have to meet these standards of restriction, but they are prohibited in the first 25 feet of the setback area.

(xvi) Chapter guidelines do not apply to preexisting fences, but if pre-existing fences are replaced they must be in conformity with these fence guidelines.

(xvii) Chapter guidelines do not apply to fences under current repair or reconstruction/replacement.

(2) *Commercial district.*

a. The following uses are permitted within the commercial district:

1. All uses permitted in the residential district.

2. Retail and wholesale commercial businesses, including, but not limited to, businesses that sell, trade, or otherwise dispense commodities

or goods to the public or other retail businesses for a profit, excepting any business that is offensive in nature as provided under town ordinance, chapter 26, article II, or not classified as industrial.

3. Offices, including, but not limited to, medical, dental, law, real estate, insurance, accounting and government.

4. Services, including, but not limited to, motels, restaurants, lounges, bowling alleys, movie theaters, gas stations, truck stops, mechanic shops, and repair shops.

5. Mobile home parks.

6. Multiresidential developments in excess of two units per lot.

7. Manufactured homes which do not meet the standards of MCA 76-2-302(4).

b. Commercial district standards.

1. *Lot size.* All buildings must be located on a lot no less than 50 feet by 150 feet, or 7,500 square feet.

2. *Setbacks.* Buildings shall be set back a minimum of eight feet in alleyways or fire lanes.

3. *Parking.* Residential uses shall provide at least one off-street parking space for each dwelling unit within the lot boundary. All other uses shall provide sufficient off-street parking to meet the anticipated parking needs of employees and customers.

4. *Loading areas.* Loading areas shall be provided which allow commercial and service trucks to maneuver safely and to load and unload. Loading areas shall be located to separate service traffic from customer traffic. Appropriate loading or service ramps shall be provided, and service doors designed to accommodate the movement of products or equipment shall be provided.

5. *Screening.* Where the rear or the side of a commercial use abuts a residential use, a screen at least six feet high shall be required between the commercial and residential uses. The screen must be a sight-obscuring fence, shrubbery, or trees. All fences constructed, replaced, or repaired must comply with fence guidelines contained in subsection (1)b.6 of this section.

6. *Drainage.* The site shall be graded, and appropriate culverts or other drainage facilities shall be provided to remove surface run-off in a manner that will not adversely affect adjacent properties or public roads.

7. *Signs.* No sign shall exceed a total area of 200 square feet. Signs shall not exceed a height of 45 feet above ground level. Buzzing, whistling, or moving signs are not permitted.

8. *Mobile home park guidelines.*

   (i) A mobile/trailer home park is defined as a residential use in which two or more mobile/trailer homes are located on a single lot.

   (ii) A person who owns or operates a mobile/trailer home park within the town shall possess a current license issued by the state.

   (iii) The term "trailer home or house trailer" means a form of housing designed to be moved from one place to another by an independent power connected to the trailer home, which is either eight feet wide or less, or 45 feet long or less.

   (iv) The term "mobile/trailer home" means a form of housing known as "trailers," "house trailers," or "trailer coaches" exceeding eight feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to the mobile home, or any trailer, house trailer, or trailer coach up to eight feet in width or 45 feet in length used as a principle residence.

   (v) Each mobile/trailer home in a mobile/trailer home park shall have at least 25 feet of space separating each mobile/trailer home, including porches and additions. Mobile/trailer homes shall be set back a minimum of 25 feet from the front property line, eight feet from the rear property line, and eight feet from the side property line. The front property line is defined as that which is parallel to the street and which determines the address of the trailer park.

   (vi) Permanent foundations for mobile/trailer homes shall be any of the following: cement footings, EPA-approved treated timber, cement blocks, concrete pad, or basement. Tie-downs shall be required if the mobile/trailer home is not permanently attached to a foundation.

(vii) All mobile/trailer homes in a mobile/trailer park shall be skirted with exterior plywood or siding, metal or fiberglass skirting, and shall be painted to match or compliment the mobile/trailer home.

(viii) Access to each mobile/trailer home space must be provided at least one hard surface off-street parking space of compacted gravel, asphalt, concrete, cement, or brick pavers.

(3) *Industrial district.*

a. The following uses are permitted within the industrial district:

1. All uses permitted in the residential and commercial districts.
2. Manufacturing or processing.
3. Storage yards, including, but not limited to, fuel, oil and construction supplies and equipment.
4. Mini storage units.

b. Industrial standards.

1. *Setbacks.* Buildings shall be set back at least 25 feet from the front lot line, 25 feet from the side property line, and 20 feet from the rear lot line.
2. *Parking.* Industrial uses shall provide one off-street parking space for each employee, plus one space for each vehicle maintained on the premises or used for business. Residential uses shall provide at least one off-street parking space for each dwelling unit within the lot boundary. All other uses shall provide sufficient off-street parking to meet the anticipated parking needs of employees and customers.
3. *Loading.* One off-street loading space shall be provided for each use requiring delivery of goods having a gross floor area of up to 5,000 square feet, with additional loading space provided for each additional 10,000 square feet, or fraction thereof.
4. *Screening.* Where the rear or side of an industrial use abuts a residential or commercial use, a screen at least six feet high shall be provided between the industrial use and the other use. The screen shall be a sight-obscuring fence, shrubbery, or trees. All fences constructed, replaced, or repaired must comply with fence guidelines contained in subsection (1)b.6 of this section.

5. *Drainage.* The site shall be graded, and appropriate culverts and other drainage facilities shall be provided to remove surface runoff in a manner that will not adversely affect adjacent properties or public roads.
6. *Signs.* No sign shall exceed a total area of 200 square feet. Signs shall not exceed a height of 45 feet above ground level. Buzzing, whistling, or moving signs are not permitted.
7. *Fences.* In addition to fencing or screening fences required in subsection (3)b.4 of this section, all fences constructed, replaced, or repaired must comply with fence guidelines contained in subsection (1)b.6 of this section.

(Prior Code, § 11.04.060; Ord. of 5-8-2013)

Sec. 42-77. Zoning districts; nonpermitted uses.

(a) No use of land shall be permitted or conditionally permitted within the town that is in violation of federal, state, or local law.

(b) This provision applies only to applications for new business licenses after May 8, 2013, and not to renewal of existing business licenses.

(Prior Code, § 11.04.065; Ord. of 5-8-2013)

Secs. 42-78—42-97. Reserved.

ARTICLE IV. SUPPLEMENTAL REGULATIONS

Sec. 42-98. Standards for subdivisions when developed within the town limits.

Requirements for any subdivision, before being granted annexation to the town limits, are as follows:

(1) All water lines must be looped into the current system, leaving no dead-ends.

(2) Sewer connections to be determined by the public works director.

(3) Curbs, gutters and sidewalks on all streets (sidewalks decided on a case-by-case basis).

(4) Paved streets 28 feet wide, with 60-foot easement measurements.

(5) Streetlights approved by the town.

(6) At least one through-street accessible by all lots; no cul-de-sacs if at all possible (cul-de-sacs must be a minimum of 120 feet in diameter, if necessary).

(7) Fire hydrants at each street intersection, and at intermediate points between intersections, as recommended by the fire marshal (spacing may range from 350 feet to 600 feet, depending on the area being served).

(8) Weed control plan as mandated by the county and state.

(9) All major utilities will be placed underground.

(10) Storm sewer or drainage plan in place.

(11) Park space (state law requires one-ninth of total land space) that is deemed usable by the town, or cash in lieu of park space.

(12) Off-street parking for each lot, as per current town ordinance.

(13) Water and sewer infrastructure all done at the beginning of the project, regardless of lots sold.

(14) Paving and sidewalks within one year.

(15) Covenants to be determined by developer, in accordance with town ordinance.

(16) Subdivisions either developed or undeveloped wanting to be annexed into the town must meet all subdivision requirements.

(17) All subdivisions where development is planned or done in phases will not be grandfathered in by requirements at the time of subdivision approval. Each phase as completed will be held to the most current subdivision standards as per ordinance or state law.

(Prior Code, § 11.04.068; Ord. of 5-8-2013)

CODE COMPARATIVE TABLE

PRIOR CODE

This table gives the location within this Code of those sections of the Prior Code, as amended through May 6, 2000, that are included herein.

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*Note—The adoption, amendment, repeal, omissions, effective date, explanation of numbering system and other matters pertaining to the use, construction and interpretation of this Code are contained in the adopting ordinance and preface which are to be found in the preliminary pages of this volume.

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