

TITLE 1
ADMINISTRATION

Subject	Chapter
Belgrade City Code	1
Saving Clause	2
Definitions	3
General Penalty	4
General And Corporate Provisions	5
City Officers And Employees	6
Elections	7
Revenue And Finance	8
Special Improvement District Revolving Fund	8A
Impact Fees	8B

CHAPTER 1
BELGRADE CITY CODE

SECTION:

- 1-1-1: Title
- 1-1-2: Acceptance
- 1-1-3: Rules Of Construction
- 1-1-4: Amendments
- 1-1-5: Code Alterations

1-1-1: **TITLE:** Upon the adoption by the council, this code is hereby declared to be and shall hereafter constitute the official city code of Belgrade. This code of ordinances shall be known and cited as the *BELGRADE CITY CODE* and is hereby published by authority of the council and shall be supplemented to incorporate the most recent legislation of the city as provided in section 1-1-4 of this chapter. Any reference to the number of any section contained herein shall be understood to refer to the position of the same number, its appropriate chapter and title heading, and to the general penalty clause relating thereto, as well as to the section itself, when reference is made to this code by title in any legal documents. (1983 Code §§ 1.00.010, 1.00.020; amd. 2009 Code)

1-1-2: **ACCEPTANCE:** The city code, as hereby presented in printed form, shall hereafter be received without further proof in all courts and in administrative tribunals of this state as the ordinances of the city of general and permanent effect, except the excluded ordinances enumerated in section 1-2-1 of this title. (1983 Code § 1.00.020; amd. 2009 Code)

1-1-3: **RULES OF CONSTRUCTION:** In the construction of this official code and all ordinances amendatory thereof or supplementary thereto, the following rules shall be observed unless such construction would be inconsistent with the manifest of the legislative body or repugnant to the context:

- A. Intent To Defraud: Whenever, by any of the provisions of this code, an intent to defraud is required in order to constitute an offense, it is sufficient if an intent appears to defraud any person, association or body politic or any combination of persons.
- B. Liability Of Employers And Agents: When the provisions herein contained prohibit the commission or omission of any act, not only the person actually doing the prohibited thing or omitting the directed act, but also the employer and all other persons concerned or aiding or abetting the person shall be guilty of the offense described and liable to the penalty set forth.
- C. Title Of Section And Subsections¹: The title of any section or subsection of this code shall not be deemed to restrict, qualify or limit the effect of the provisions set forth and contained in such section or subsection. (1983 Code § 1.00.050)

1-1-4: **AMENDMENTS:** Any ordinance amending this code shall set forth the title, chapter and section number of the section or sections to be amended, and this shall constitute sufficient compliance with any statutory requirement that no ordinance or any section thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or amended section in full. All such amendments or revisions by ordinance shall be immediately forwarded to the codifiers, and such ordinance material shall be prepared for insertion in its proper place in each copy of this code. Each such replacement page shall be properly identified and shall be inserted in each individual copy of the city code. (1983 Code § 1.00.030; amd. 2009 Code)

1-1-5: **CODE ALTERATIONS:** It shall be deemed unlawful for any person to alter, change, replace or deface in any way any section or any page of this code in such a manner that the meaning of any phrase or order may be changed or omitted. Replacement pages may be inserted according to the official instructions when so authorized by the council. The director of finance shall see that the replacement pages are properly inserted in the official copies maintained in the office of the director of finance. Any person having custody of a copy of the city code shall make every effort to maintain said code current as to the most recent ordinances passed. Such person shall see to the immediate insertion of new or replacement pages when such are delivered or made available to such

1. See also section 1-3-3 of this title.

person through the office of the director of finance. Such code books, while in the actual possession of officials and other interested persons, shall be and remain the property of the city and shall be returned to the office of the director of finance when directed so to do by order of the council. (2009 Code)

CHAPTER 2

SAVING CLAUSE

SECTION:

- 1-2-1: Repeal Of General Ordinances
- 1-2-2: Public Ways And Public Utility Ordinances
- 1-2-3: Effect Of Repealing Ordinances
- 1-2-4: Court Proceedings
- 1-2-5: Severability Clause

1-2-1: **REPEAL OF GENERAL ORDINANCES:** All general ordinances of the city passed prior to the adoption of this code are hereby repealed, except such as are included in this code or are by necessary implication herein reserved from repeal (subject to the saving clauses contained in the following sections), and excluding the following ordinances which are not hereby repealed: tax levy ordinances; appropriation ordinances; ordinances relating to boundaries and annexations; franchise ordinances and other ordinances granting special rights to persons or corporations; contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; ordinances establishing, naming or vacating streets, alleys or other public places; improvement ordinances; bond ordinances; ordinances relating to elections; ordinances relating to the transfer or acceptance of real estate by or from the city; and all special ordinances. (2009 Code)

1-2-2: **PUBLIC WAYS AND PUBLIC UTILITY ORDINANCES:** No ordinance relating to railroad crossings with streets and other public ways, or relating to the conduct, duties, service or rates of public utilities shall be repealed by virtue of the adoption of this code or by virtue of the preceding section, excepting as the city code may contain provisions for such matters, in which case, this code shall be considered as amending such ordinance or ordinances in respect to such provisions only. (2009 Code)

1-2-3: **EFFECT OF REPEALING ORDINANCES:** The repeal of ordinances as provided shall not affect any right which has accrued, any duty imposed, any penalty incurred, or any action or proceeding as commenced under or by virtue of the ordinance repealed, or the tenure of office of any person holding office at the time when they take effect; nor shall the repeal of any ordinance thereby have the effect of reviving any ordinance theretofore repealed or superseded. (1983 Code § 1.00.040)

1-2-4: **COURT PROCEEDINGS:**

- A. Prior Acts: No new ordinance shall be construed or held to repeal a former ordinance whether such former ordinance is expressly repealed or not, as to any offense committed against such former ordinance or as to any act done, any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or so done, or any penalty, forfeiture or punishment so incurred or any right accrued or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform to the ordinance in force at the time of such proceeding, so far as practicable. If any penalty, forfeiture or punishment may be mitigated by any provision of a new ordinance, such provision may be, by consent of the party affected, applied to any judgment announced after the new ordinance takes effect.
- B. Extend To All Repeals: This section shall extend to all repeals, either by express words or implication, whether the repeal is in the ordinance making any new provisions upon the same subject or in any other ordinance.
- C. Currently Pending Actions: Nothing contained in this chapter shall be construed as abating any action now pending under or by virtue of any general ordinance of the city herein repealed, and the provisions of all general ordinances contained in this code shall be deemed to be continuing provisions and not a new enactment of the same provisions; nor shall this chapter be deemed as discontinuing, abating, modifying or altering any penalty accrued or to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any right of the city under any ordinance or provision thereof in force at the time of the adoption of this code. (2009 Code)

1-2-5: **SEVERABILITY CLAUSE:** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this code or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this code, or any part thereof. The council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. (1983 Code § 1.00.050(4); amd. 2009 Code)

CHAPTER 3
DEFINITIONS

SECTION:

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

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

- A. Whenever any word in any section of this code importing the plural number is used in describing or referring to any matters, parties or persons, any single matter, party or person shall be deemed to be included, although distributive words may not have been used. When any subject matter, party or person is referred to in this code by words importing the singular number only, or a particular gender, several matters, parties or persons and the opposite gender and bodies corporate shall be deemed to be included; provided, that these rules of construction shall not be applied to any section of this code which contains any express provision excluding such construction or where the subject matter or context may be repugnant thereto.
- B. The word "ordinance" contained in the ordinances of the city has been changed in the content of this code to "title", "chapter", "section" and/or "subsection" or words of like import for organizational and clarification purposes only. Such change to the city's ordinances is not meant to amend passage and effective dates of such original ordinances. (2009 Code)
- C. Words prohibiting anything being done, except in accordance with a license or permit or authority from a board of officers, shall be construed as giving such board of officers power to license or permit or authorize such thing to be done. (1983 Code § 1.00.050(5))

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

AGENT:	A person acting on behalf of another with authority conferred, either expressly or by implication.
CITY:	The city of Belgrade, county of Gallatin, state of Montana.
CODE:	The municipal code of the city of Belgrade.
COUNCIL:	Unless otherwise indicated, the city council of the city of Belgrade.
COUNTY:	The county of Gallatin, state of Montana.
DAY:	Any twenty four (24) hour period from twelve o'clock (12:00) midnight to twelve o'clock (12:00) midnight.
DIRECTOR OF FINANCE:	The director of finance of the city of Belgrade.
EMPLOYEES:	Whenever reference is made in this code to a city employee by title only, this shall be construed as though followed by the words "of the city of Belgrade".
KNOWINGLY:	Imparts a knowledge that the fact exists which brings the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.
LAND, REAL ESTATE AND REAL PROPERTY:	Include land, tenements, hereditaments, water rights, possessory rights and claims.
LICENSE:	The permission granted for the carrying on of a business, profession or occupation.
MCA:	Abbreviation for Montana Code Annotated.

MAY:	Permissive.
MONTH:	A calendar month unless otherwise expressed.
MUNICIPALITY OR MUNICIPAL:	The city of Belgrade.
NEGLECT, NEGLIGENCE, NEGLIGENT AND NEGLIGENTLY:	Imparts a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concern.
NUISANCE:	Anything offensive to the sensibilities of reasonable persons, or any act or activity creating a hazard which threatens the health and welfare of inhabitants of the city, or any activity which by its perpetuation can reasonably be said to have a detrimental effect on the property of a person or persons within the community.
OATH:	Includes "affirmation", and the word "swear" includes the word "affirm". Every mode of oral statement under oath or affirmation is embraced in the term "depose".
OCCUPANT:	As applied to a building or land, shall include any person who occupies the whole or any part of such building or land whether alone or with others.
OFFENSE:	Any act forbidden by any provision of this code or the omission of any act required by the provisions of this code.
OFFICERS:	Includes officers and boards in charge of departments and the members of such boards. Whenever reference is made in this code to a city officer by title only, this shall be construed as though followed by the words "of the city of Belgrade".
OFFICIAL TIME:	Standard time in the city of Belgrade.

OPERATOR:	The person who is in charge of any operation, business or profession.
OWNER:	As applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of a part of such building or land.
PERSON:	Any natural person, firm, association, joint venture, joint stock company, partnership, organization, club, fraternal organization, company, corporation, business, trust, or their manager, lessee, agent, servant, officer, or employee of any of them.
PERSONAL PROPERTY:	Includes every description of money, goods, chattels, effects, evidence of rights in action and all written instruments by which any pecuniary obligation, right or title to property is created, acknowledged, transferred, increased, defeated, discharged or diminished and every right or interest therein.
PROPERTY:	Includes both real and personal property.
PUBLIC THOROUGHFARE:	Includes streets, alleys, lanes, courts, boulevards, public ways, public squares, public places and sidewalks.
QUARTER:	Any three (3) month period ending with the last day of March, June, September and December.
RETAILER:	Unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things direct to the consumer.
RIGHT OF WAY:	The privilege of the immediate use of the roadway or other property.
SHALL:	Mandatory.
SIGNATURE:	Includes any name, mark, or sign written with the intent to authenticate any instrument of writing.

STATE:	The state of Montana.
STREET:	Includes alleys, lanes, courts, boulevards, public ways, public squares, public places and sidewalks.
TENANT:	As applied to a building or land, shall include any person who occupies the whole or any part of such building or land, whether alone or with others.
WHOLESALER:	The terms "wholesaler" and "wholesale dealer" as used in this code, unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things to persons who purchase for the purpose of resale.
WILFULLY:	When applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make intent to violate law or to injure another or to acquire an advantage.
WRITTEN, IN WRITING:	May include printing and any other mode of representing words and letters, but when the written signature of any person is required by law to any official or public writing or bond, it shall be in the proper handwriting of such person, or in case such person is unable to write, by such person's proper mark.
YEAR:	Any one calendar year unless otherwise expressed. (1983 Code § 1.00.050(5); amd. 2009 Code)

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

such sections, including the catchlines, are amended or reenacted¹. (2009 Code)

1. See also subsection 1-1-3C of this title.

CHAPTER 4

GENERAL PENALTY

SECTION:

- 1-4-1: General Penalty
- 1-4-2: Execution On Fine
- 1-4-3: Civil Or Criminal Action
- 1-4-4: Fines And Costs; Payment Of
- 1-4-5: Malicious Complaint; Procedure
- 1-4-6: Actions To Recover Fines, Forfeitures, Penalties; Limitations

1-4-1: **GENERAL PENALTY¹:**

- A. Penalty: Whenever, in any provision of this code or other ordinance of the city, any act is prohibited or is made or declared to be unlawful, a misdemeanor, an infraction, or an offense, or whenever in any such provision or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is otherwise provided therefor, any person, upon conviction for the violation of any such provision of this code or ordinances, shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both such fine and imprisonment for each such misdemeanor offense; or by a fine not to exceed three hundred dollars (\$300.00) when the offense is designated as an infraction by state law or by any section or provision of this code, or if the infraction is a repeat offense, a penalty not to exceed five hundred dollars (\$500.00) for each repeat violation. Each day any violation of any provision of this code shall continue shall constitute a separate offense.
- B. Construction; Interpretation: In the construction and interpretation of this section, the revocation of a license or permit shall not be considered as a recovery or penalty so as to bar any other penalty being enforced. (1983 Code § 1.08.010; amd. 2009 Code)

1. MCA §§ 7-1-4150, 7-1-4151, 7-5-109, 7-5-4207.

1-4-2: EXECUTION ON FINE:

- A. **Fine Only:** If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case.
- B. **Fine And Imprisonment:** If the judgment is for a fine and imprisonment until the fine be paid, the defendant must be committed to the custody of the proper officer, and by him detained until the judgment is complied with. The imprisonment must not exceed one day for every fifty dollars (\$50.00) of the fine. (Code § 1.08.020; amd. 2009 Code)

1-4-3: CIVIL OR CRIMINAL ACTION¹:

- A. **Brought Before City Judge:** All actions, whether in form civil or criminal, brought to recover any fine, forfeiture, or penalty for a breach or violation of any ordinance, shall be commenced before the city judge.
- B. **Complaint:** No warrant shall be issued by him until a complaint, under oath, has been made before the city judge, charging a breach or violation of some ordinance, referring to the same by number and section, with a brief description of the offense, substantially as required of complaints in criminal cases under the statutes of the state.
- C. **Warrant:** The warrant shall briefly describe the offense, shall be returnable forthwith, and shall be in the name of the city, and be directed to any law enforcement officer of the state.
- D. **Suit Commenced By Summons:** At the option of any officer commencing the same, a suit may be commenced by summons for the recovery of fines prescribed by ordinance, in which case no written or sworn complaint shall be required. Such action shall be in the name of the city, at the time named in such summons (which must be not less than 4 or more than 10 days before the trial). Whether defendant appears or not, upon proof of service, the judge shall proceed to trial; and upon conviction, shall enter judgment for fine and costs and issue execution therefor. (1983 Code § 1.08.030)

1. MCA title 3, chapters 6 and 11.

1-4-4: **FINES AND COSTS; PAYMENT OF:** If any person arrested under warrant shall, on trial, be convicted, and shall not immediately pay the full amount of his fine and costs, the city judge shall forthwith issue a mittimus or commitment directing the officer making the arrest to deliver the defendant to the custody of the person having charge of the Gallatin County detention center, and requiring such officer to keep the defendant in close confinement until such fine and costs shall be paid or satisfied by law; provided, that if any person so convicted can pay part but not all of said fine and costs, the city judge shall endorse the same on the order of commitment and allowance of the same shall be made in the term of confinement; and, provided further, that the city judge, in case any person being convicted and unable to pay the fine and costs, may take good and sufficient security for the payment of the same within a time not more than thirty (30) days; and the party becoming security shall sign an agreement to that effect, to be entered on the docket. If payment is not made within the time specified, a commitment shall be issued against the defendant and an action of debt shall be instituted against the surety. (1983 Code § 1.08.040; amd. 2009 Code)

1-4-5: **MALICIOUS COMPLAINT; PROCEDURE:** When any person has been arrested and brought to trial for any alleged violation of any ordinance and it shall appear that the prosecutor or the complaining witness has made complaint maliciously and without probable cause, judgment shall be rendered against the prosecutor or complaining witness for costs; and the court may issue execution to recover the same as in judgment for debt. Whenever the city judge shall have reason to believe any complainant is actuated by malice in making complaint, said judge, before issuing process, may require the complainant to deposit a sum sufficient to secure the probable costs. (1983 Code § 1.08.050)

1-4-6: **ACTIONS TO RECOVER FINES, FORFEITURES, PENALTIES; LIMITATIONS:** All actions to recover any fines, forfeitures, or penalties for the violation of any ordinance shall be commenced within two (2) years after the right of action accrued. (1983 Code § 1.08.060)

CHAPTER 5

GENERAL AND CORPORATE PROVISIONS

SECTION:

1-5-1:	Wards
1-5-2:	Corporate Seal
1-5-3:	City Limits
1-5-4:	Depository
1-5-5:	Ordinances; Posting Or Publishing
1-5-6:	Liability Insurance For City Contracts

1-5-1: **WARDS¹:**

- A. Established: Pursuant to Montana Code Annotated section 7-5-4401, the city council hereby establishes the city into three (3) wards as delineated and defined by the document attached to the ordinance codified herein on file in the office of the director of finance entitled "1987 City Of Belgrade Ward Boundaries".
- B. Effective Date: The above stated boundaries shall exist beginning July 1, 1987. (Ord. 87-2, 5-4-1987)

1-5-2: **CORPORATE SEAL:** A seal of circular form, capable of making an impression upon paper, with the words, "CITY OF BELGRADE MONTANA" on the edge of said circle, with "INC" in small print rotated at a ninety degree (90°) angle between the beginning of the words "CITY" and "MONTANA" and the date "1906" in small print rotated at a ninety degree (90°) angle between the end of the words "BELGRADE" and "MONTANA"; in the center is a drawing showing the mountains, an airplane, water tower and grain elevator, is hereby adopted and declared to be the corporate seal of the city, to be used in all cases in which a seal is required by the laws of Montana and the ordinances of the city, to be used in attesting its corporate acts.

1. See sections 5.03 and 5.04 of charter for reapportionment of wards and redistricting.



(1983 Code § 1.10.010; amd. Res. 2007-2, 2-5-2007; 2009 Code)

1-5-3: **CITY LIMITS:** The Belgrade city limits are hereby defined to be as set forth on the official map of said city as prepared by the Gallatin County clerk and recorder's office. Said map is on file in the office of the director of finance, and, by this specific reference, is made a part of this chapter. (1983 Code § 1.03.010; amd. 2009 Code)

1-5-4: **DEPOSITORY:** Valley Bank of Belgrade is hereby designated and made the official depository of all funds of the city, and all funds of the city shall be deposited in said bank. (1983 Code § 1.14.010)

1-5-5: **ORDINANCES; POSTING OR PUBLISHING:** Every ordinance shall, as soon as practicable after its passage, be posted in a conspicuous place within the city limits, or be published in some newspaper of general circulation in the city, as the council may direct; or as may be required by the provisions of the Montana Code Annotated, relating to the government of cities. (1983 Code § 2.04.060; amd. 2009 Code)

1-5-6: **LIABILITY INSURANCE FOR CITY CONTRACTS:** The city shall require all persons, including all forms of business entities, as a condition of contracting with the city on all construction contracts, to provide written documentation of liability insurance upon said person or entity in the sum of one million dollars (\$1,000,000.00) for the entire period of execution of said construction contract. (Ord. 90-2, 10-1-1990)

CHAPTER 6
CITY OFFICERS AND EMPLOYEES¹

SECTION:

1-6-1: Bonds

1-6-1: **BONDS:** All city officers shall be included in a blanket bond for the faithful performance of their duties, said bond to be executed by a duly authorized surety company, the premiums thereon to be paid by the city. (2009 Code)

1. See section 1.06 of the charter for the oath of office. See administrative code for provisions regarding city officials.

CHAPTER 7
ELECTIONS

SECTION:

- 1-7-1: Elections In Accordance With State Statutes
1-7-2: Qualifications Of Electors
1-7-3: Election Wards And Precincts

1-7-1: **ELECTIONS IN ACCORDANCE WITH STATE STATUTES:**
All primary and general elections shall be held in accordance with the statutes of the state of Montana. (1983 Code § 1.04.010)

1-7-2: **QUALIFICATIONS OF ELECTORS:** Any person shall be qualified to vote in any and all city elections provided they are a resident of the city or an area which has been annexed and certified as such by the clerk and recorder of Gallatin County. (1983 Code § 1.04.020)

1-7-3: **ELECTION WARDS AND PRECINCTS¹:** Each ward of the town shall be a voting precinct of itself for the purpose of elections, whether annual or special. (1983 Code § 1.04.030)

1. See section 1-5-1 of this title for establishment of wards.

CHAPTER 8

REVENUE AND FINANCE

**ARTICLE A. SPECIAL IMPROVEMENT
DISTRICT REVOLVING FUND**

SECTION:

- 1-8A-1: Fund Created
- 1-8A-2: Sources Of Funds
- 1-8A-3: Loans To Special Improvement District Fund
- 1-8A-4: Liens Imposed For Amounts Loaned
- 1-8A-5: Uses Of Surplus In Fund
- 1-8A-6: Levy Of Tax

1-8A-1: **FUND CREATED:** In order to secure the prompt payment of any special improvement district bonds and/or warrants issued in payment of improvements made in any special improvement district, and the interest thereon as it becomes due, there is hereby created and established a fund to be known and designated as "special improvement district revolving fund". (1983 Code § 3.06.010)

1-8A-2: **SOURCES OF FUNDS:** For the purpose of providing funds for said special improvement district revolving fund:

- A. **Transfer From General Fund:** The city council may, in its discretion, from time to time, transfer to the special improvement district revolving fund from the general fund of the city such amount as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered to be loans from such general fund to the special improvement district revolving fund.
- B. **Tax Levy:** The city council shall, in addition to such transfer from the general fund, or in lieu thereof, levy and collect for said special improvement district revolving fund such a tax on all the taxable property of the city as shall be necessary to meet the financial

requirements of said fund, such levy, together with such transfer, not to exceed, in any one year, five percent (5%) of the principal amount of the then outstanding special improvement district bonds and/or warrants. (1983 Code § 3.06.020)

1-8A-3: LOANS TO SPECIAL IMPROVEMENT DISTRICT FUND:

Whenever any special improvement district bond or warrant, or interest thereon, issued for improvements made in special improvement districts shall be or shall become due and payable and there shall then be either no money or not sufficient money in the appropriate special improvement district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the city council, be loaned by the special improvement district revolving fund to such special improvement district fund, and thereupon such bond or warrant, or such interest thereon, whether it be for principal or for interest, or for both, as the city council may in its discretion elect or determine, shall be paid from the money so loaned, or from the money so loaned when added to the insufficient amount, as the case may require. (1983 Code § 3.06.030)

1-8A-4: LIENS IMPOSED FOR AMOUNTS LOANED:

Whenever any loan is made to any special improvement district fund from the special improvement district revolving fund, the special improvement district revolving fund shall have a lien therefor on all unpaid assessments and/or installments of assessments on such district, whether delinquent or not, and on all monies thereafter coming into such special improvement district fund to the amount of such loan, together with interest thereon from the time it was loaned, at the rate or percentage borne by the bond or warrant for payment of which, or of interest thereon, such loan was made. Whenever there shall be monies in such special improvement district fund which are not required for the payment of any bond or warrant of such special improvement district, or of interest thereon, so much of such monies as may be necessary to pay such loan shall, by order of the city council, be transferred to the special improvement district revolving fund, and after all the bonds and warrants issued on any special improvement district have been fully paid, all monies remaining in such special improvement district fund shall, by order of the city council, be transferred to and become a part of the special improvement district revolving fund. (1983 Code § 3.06.040)

1-8A-5: USES OF SURPLUS IN FUND: Whenever there is, in the special improvement district revolving fund, an amount in excess of the amount which the city council deems necessary for the

payment or redemption of maturing bonds or warrants, or interest thereon, the city council may:

- A. Transfer To General Fund: By a vote of all its members, at a meeting called for that purpose, order such excess, or any part thereof, transferred to the general fund of the city; or
- B. Purchase Of Property For Delinquent Taxes: Use such excess, or any part thereof, for the purpose of purchase of property at sales for delinquent taxes or assessments, or both, or which may have been struck off or sold to the county of Gallatin for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessments for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city; and
- C. Disposition Of Property: Sell any tax certificates issued on any such sale or sales. After acquiring title to such property, the city council may lease such property or sell the same at public or private sale and make conveyance thereof, or otherwise dispose thereof as the interest of the city may require; and all proceeds from such sale of tax certificates, or from such leasing, sale, or other disposition of the property shall belong to and be paid into the special improvement district revolving fund, and be subject to transfer, in whole or in part, to the general fund by the vote of all the members of the city council at a meeting called for that purpose, as hereinbefore provided. (1983 Code § 3.06.050)

1-8A-6: **LEVY OF TAX:** The special tax to be levied, as provided in subsection 1-8A-2B of this article, shall be in addition to the tax for general, municipal and administrative purposes, and the levy shall be made by the city council at the time and by the resolution passed and adopted by the city council as provided by the ordinances of the city and the state statutes. (1983 Code § 3.06.060)

CHAPTER 8
REVENUE AND FINANCE
ARTICLE B. IMPACT FEES

SECTION:

- 1-8B- 1: Legislative Findings
- 1-8B- 2: Authority; Applicability
- 1-8B- 3: Intent
- 1-8B- 4: Definitions
- 1-8B- 5: Impact Fee Advisory Committee
- 1-8B- 6: Street Impact Fees
- 1-8B- 7: Fire Protection Impact Fees
- 1-8B- 8: Water Impact Fees
- 1-8B- 9: Sewer Impact Fees
- 1-8B-10: Park Impact Fees
- 1-8B-11: Administrative Fee
- 1-8B-12: Credits Against Impact Fees
- 1-8B-13: Miscellaneous Provisions
- 1-8B-14: Appeal

1-8B-1: **LEGISLATIVE FINDINGS:** The city council finds that:

- A. Capital improvements to streets, fire protection, water and sewer systems, and parks are necessary to accommodate continued growth within the city to protect the health, safety and general welfare of the citizens of the city.
- B. New residential and nonresidential development imposes increased and excessive demands upon existing city facilities.
- C. New development often overburdens existing public facilities and the tax revenues generated from new development often do not generate sufficient funds to provide public facilities to serve the new development.

- D. New development is expected to continue, and will place ever increasing demands on the city to provide public facilities to serve new development.
- E. The creation of an equitable impact fee system would enable the city to impose a proportionate share of the costs that are reasonably related to the capital improvement demands of new development.
- F. The impact fee study, dated February 14, 2007, and as updated, prepared by TischlerBise Fiscal, Economic & Planning Consultants, sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the city streets, fire protection, water and sewer systems, and parks necessary to meet the demands for such services created by new development.
- G. The city establishes, as city standards, the assumptions and service standards referenced in the impact fee studies as part of its current plans for the major street system and for city fire protection, water and sewer systems and parks.
- H. The impact fees described in this article are based on the impact fee study, and do not exceed the maximum impact fee determined by the impact fee study.
- I. The impact fees adopted in this article are reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.
- J. After the consideration of the need for capital improvements required to serve new development, and after consideration of the payments for capital improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes and other available sources of funding the capital improvements, the city council determined that the impact fees adopted in this article do not exceed a proportionate share of the costs incurred or to be incurred by the city in accommodating the development and are reasonably related to the benefits accruing to the development paying the impact fees.
- K. The types of infrastructure included in the impact fee study all have citywide service areas. Therefore, impact fees will be imposed on a citywide basis with one benefit district comprised of all land within the city limits.

- L. This article creates a system by which impact fees will be used to expand or improve the city streets, fire protection, water and sewer systems, and parks in ways that benefit the development that paid each fee within a reasonable period of time after the fee is paid.
- M. This article creates a system under which development impact fees shall not be used to cure existing deficiencies in public facilities.
- N. This article does not hold new development to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.
- O. It is in the best interests of the city and new development to include an administrative surcharge, not to exceed five percent (5%) of the total impact fee, to help cover impact fee expenses.
- P. The capital improvement plan for growth related projects adopted by the city must cover at least a five (5) year period, and must be reviewed and updated at least every two (2) years.
- Q. This article adopts policies and procedures related to site specific credits or developer reimbursements that are reasonably designed to avoid double payment for growth related capital improvements. (Ord. 2007-11, 12-17-2007)

1-8B-2: AUTHORITY; APPLICABILITY:

- A. This article is enacted pursuant to the city's general police power, the authority granted to the city by the Montana state constitution, section 7-1-101, and Montana Code Annotated title 7, chapter 6, part 16.
- B. The provisions of this article shall apply to all of the territory within the limits of the city.
- C. The provisions of this article related to water impact fees shall also apply to all properties located outside the city that are connected to the city water system, if any.
- D. The provisions of this article related to sewer impact fees shall also apply to all properties located outside the city that are connected to the city sewer system, if any. (Ord. 2007-11, 12-17-2007)

1-8B-3: INTENT:

- A. It is the intent of this article to adopt impact fees that are reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.
- B. It is the further intent of this article to adopt impact fees that do not exceed a proportionate share of the costs incurred or to be incurred by the city in accommodating the development.
- C. It is the intent of this article that impact fees collected under the provisions of this article not be used to correct existing deficiencies in a public facility.
- D. It is the intent of this article that new development not be held to a higher level of services than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.
- E. It is the intent of this article that any monies collected from any impact fee and deposited in an impact fee fund shall not be commingled with monies from a different impact fee fund or ever be used for a type of facility or equipment different from that for which the fee was paid. (Ord. 2007-11, 12-17-2007)

1-8B-4: DEFINITIONS: As used in this article, the following definitions apply:

- | | |
|------------------------------|---|
| CAPITAL IMPROVEMENTS: | <p>A. Includes: Improvements, land, and equipment with a useful life of ten (10) years or more that increase or improve the service capacity of a public facility.</p> <p>B. Does Not Include: The term does not include consumable supplies.</p> |
| CONNECTION CHARGE: | The actual cost of connecting a property to a public utility system, and is limited to the labor, materials, and overhead involved in making connections and installing meters. |
| DEVELOPMENT: | Construction, renovation, or installation of a building or structure, a change in use of a |

building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.

GOVERNMENTAL ENTITY:

The city of Belgrade, Montana.

IMPACT FEE:

A. Includes: Any charge imposed upon development by a governmental entity as part of the development approval process to fund the additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed five percent (5%) of the total impact fee collected.

B. Does Not Include: The term does not include:

1. A charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;

2. A connection charge;

3. Any other fee authorized by law, including, but not limited to, user fees, special improvement district assessments, fees authorized under Montana Code Annotated title 7 for county, municipal, and consolidated government sewer and water districts and systems, and costs of ongoing maintenance; or

4. On site or off site improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity.

PERSON:

An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or

commercial entity, other than the city of Belgrade, Montana.

PROPORTIONATE SHARE:

That portion of the cost of capital system improvements that reasonably relates to the service demands and needs of the project. A proportionate share must take into account the limitations provided in Montana Code Annotated section 7-6-1602.

PUBLIC FACILITIES:

A. A water supply production, treatment, storage, or distribution facility;

B. A wastewater collection, treatment, or disposal facility;

C. A transportation facility, including roads, streets, bridges, rights of way, traffic signals, and landscaping;

D. A stormwater collection, retention, detention, treatment, or disposal facility or a flood control facility;

E. A police, emergency medical, rescue, or fire protection facility; and

F. Other facilities for which documentation is prepared as provided in Montana Code Annotated section 7-6-1602 that have been approved as part of an impact fee ordinance or resolution by a two-thirds ($\frac{2}{3}$) majority of the city council for the city of Belgrade. (Ord. 2007-11, 12-17-2007; amd. 2009 Code)

1-8B-5: IMPACT FEE ADVISORY COMMITTEE¹:

- A. Created: An impact fee advisory committee is created for the purpose of advising the city council regarding the process of calculating, assessing and spending impact fees.

1. See article II, subsection 2.04B3 of the administrative code.

- B. Membership: The impact fee advisory committee shall consist of seven (7) members to be appointed by the city council. The members shall be the city manager, the city finance director, a certified public accountant who shall hold no other public office or employment, a builder or land developer, and three (3) citizens of Belgrade not employed in the development industry, as selected by the city council.
- C. Terms: Upon the creation of the committee, the members shall be appointed for the following terms: public officers and employees during the terms of their office, two (2) members that hold no public office or employment for a term of two (2) years, three (3) members that hold no public office or employment for a term of three (3) years. The terms shall expire on January 1 of the second and third year, respectively, following appointment. Thereafter, as terms expire, each new appointment shall be for a term of two (2) years.
- D. Residency: All members must be residents of the city.
- E. Compensation: Members shall serve without compensation for their time and service.
- F. Meetings: Meetings of the board shall be conducted in accordance with all applicable rules and regulations of the city and any adopted bylaws of the committee.
- G. Training: The city shall provide, and the members shall attend, training in the necessary subject matter which will, in the judgment of the city, enable informed participation by members of the committee. Such training shall be provided on an annual basis and shall be provided prior to the impact fee advisory committee, or any individual member thereof, making any recommendation to the city commission.
- H. Functions: The impact fee advisory committee shall perform its functions conterminously with the city use of impact fees. (Res. 2006-2, 3-6-2006)

1-8B-6: STREET IMPACT FEES:

A. Imposition Of Street Impact Fees:

1. On or after the effective date hereof, any person who seeks to obtain a building permit, or an extension of a building permit that

was issued before the effective date hereof, is required to pay a street impact fee in the amount specified in this article.

2. No building permit shall be issued, or extension granted, until the street impact fee described in this article has been paid, unless the development for which the permit is sought is exempted by subsection F of this section.

B. Amount Of Street Impact Fee:

1. The amount of the street impact fee shall be fifty five percent (55%) of the amounts set forth in the following street impact fee schedule:

STREET IMPACT FEE SCHEDULE

Residential (per housing unit):

210	Single-family detached	\$3,856.00
230	All other housing types	2,361.00

Nonresidential (per square foot of floor area):

820	Commercial/shop center	6.94
770	Business park	1.68
720	Medical-dental office	7.21
710	General office	2.66
610	Hospital	3.50
151	Miniwarehouse	0.49
150	Warehousing	0.99
140	Manufacturing	0.76
110	Light industrial	1.39
520	Elementary school	1.91

Nonresidential (per unique demand indicator):

620	Nursing home (per bed)	473.00
565	Daycare (per student)	429.00
530	Secondary school (per student)	245.00
520	Elementary school (per student)	170.00
320	Lodging (per room)	1,124.00

C. Payment Of Street Impact Fee:

1. Any person who applies for a building permit or for an extension of a building permit that was issued before the effective date hereof, shall pay the street impact fee required by this article to the city prior to the issuance or extension of a permit.

2. All funds paid by a person pursuant to this section shall be identified as street impact fees and shall be promptly deposited in the street impact fee fund described in subsection D of this section.

D. Street Impact Fee Fund:

1. A single street impact fee fund is created, and such fund shall be maintained in an interest bearing account.

2. Such fund shall contain only those street impact fees collected pursuant to this article and any interest which may accrue from time to time on such amounts.

E. Use Of Street Impact Fee Funds:

1. The monies in the street impact fee fund shall be used for capital improvements that are reasonably related to the benefits accruing to the development paying the impact fees for streets.

2. Street impact fees may be used to reimburse the city for costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to Montana Code Annotated section 7-6-1602, in a manner that demonstrates the need for the excess capacity. The city may continue to assess an impact fee that recoups costs for excess capacity in an existing facility. Street impact fees used to reimburse the city for the costs to provide the excess capacity must be based on the actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

F. Exemptions From Street Impact Fee:

1. The following types of development shall be exempted from payment of the street impact fee:

a. Alterations or expansions of existing buildings where the use is not changed, no additional residential or commercial units are created, and no additional vehicle trips will be produced over and above those produced by the existing use;

b. Construction of accessory buildings or structures that will not produce additional vehicle trips over and above those produced by the primary building or land use;

c. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use where no additional vehicle trips will be produced over and above those produced by the original building or structure;

d. Any other type of development for which the applicant can demonstrate that the proposed land use and development will produce no more vehicle trips from such site over and above the trips from such site prior to the proposed development, or for which the applicant can show that a street impact fee for such site has previously been paid in an amount that equals or exceeds the street impact fee that would be required by this article for such development.

2. Any such claim for exemption must be made no later than the time when the applicant applies for the building permit, or for an extension of a building permit that was issued before the effective date hereof, and any claim for exemption not made at or before that time shall have been waived.

3. The city manager or his designee shall determine the validity of any claim for exemption pursuant to the criteria set forth in subsection F1 of this section.

- G. Site Specific Credits And Developer Reimbursements: The city council shall adopt policies and procedures related to site specific credits or developer reimbursements for street impact fees. Project improvements normally required as part of the development approval process are not eligible for credits against impact fees. (Ord. 2007-11, 12-17-2007)

1-8B-7: FIRE PROTECTION IMPACT FEES:

A. Imposition Of Fire Protection Impact Fees:

1. On or after the effective date hereof, any person who seeks to obtain a building permit, or an extension of a building permit that was issued before the effective date hereof, is required to pay a fire protection impact fee in the amount specified in this article.

2. No building permit shall be issued, or extension granted, until the fire protection impact fee described in this article has been paid, unless the development for which the permit is sought is exempted by subsection F of this section.

B. Amount Of Fire Protection Impact Fee:

1. The amount of the fire protection impact fee shall be fifty five percent (55%) of the amounts set forth in the following fire protection impact fee schedule:

FIRE PROTECTION IMPACT FEE SCHEDULE

Residential (per housing unit):

210	Single-family detached	\$917.00
230	All other housing types	639.00

Nonresidential (per square foot of floor area):

820	Commercial/shop center	0.70
770	Business park	0.15
720	Medical-dental office	0.66
710	General office	0.21
610	Hospital	0.32
151	Miniwarehouse	0.04
150	Warehousing	0.09
140	Manufacturing	0.07
110	Light industrial	0.12
520	Elementary school	0.17

Nonresidential (per unique demand indicator):

620	Nursing home (per bed)	\$ 43.00
565	Daycare (per student)	39.00
530	Secondary school (per student)	22.00
520	Elementary school (per student)	15.00
320	Lodging (per room)	104.00

C. Payment Of Fire Protection Impact Fee:

1. Any person who applies for a building permit, or for an extension of a building permit that was issued before the effective date hereof, shall pay the fire protection impact fee required by this article to the city prior to the issuance or extension of a permit.

2. All funds paid by a person pursuant to this section shall be identified as fire protection impact fees and shall be promptly deposited in the fire protection impact fee fund described in subsection D of this section.

D. Fire Protection Impact Fee Fund:

1. A single fire protection impact fee fund is created, and such fund shall be maintained in an interest bearing account.

2. Such fund shall contain only those fire protection impact fees collected pursuant to this article and any interest which may accrue from time to time on such amounts.

E. Use Of Fire Protection Impact Fee Funds:

1. The monies in the fire protection impact fee fund shall be used for capital improvements that are reasonably related to the benefits accruing to the development paying the impact fees for fire protection.

2. Fire protection impact fees may be used to reimburse the city for costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to Montana Code Annotated section 7-6-1602, in a manner that demonstrates the need for the

excess capacity. The city may continue to assess an impact fee that recoups costs for excess capacity in an existing facility. Fire protection impact fees used to reimburse the city for the costs to provide the excess capacity must be based on the actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

F. Exemptions From Fire Protection Impact Fee:

1. The following types of development shall be exempted from payment of the fire protection impact fee:

a. Reconstruction or replacement of a previously existing residential or commercial unit that does not create any additional units.

b. Construction of unoccupied accessory units related to a residential unit.

c. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use where no greater demand for fire protection will be produced over and above those produced by the original building or structure.

d. Projects for which a fire protection impact fee has previously been paid in an amount that equals or exceeds the fire protection impact fee that would be required by this article.

e. Any other type of development for which the applicant can demonstrate that the proposed land use and development will produce no more demand for fire protection from such site over and above the fire protection for such site prior to the proposed development, or for which the applicant can show that a fire protection impact fee for such site has previously been paid in an amount that equals or exceeds the fire protection impact fee that would be required by this article for such development.

2. Any such claim for exemption must be made no later than the time when the applicant applies for the building permit, or the extension of a building permit issued before the effective date hereof for the proposed development, and any claim for exemption not made at or before that time shall have been waived.

3. The city manager or his designee shall determine the validity of any claim for exemption pursuant to the criteria set forth in subsection F1 of this section.

- G. Site Specific Credits And Developer Reimbursements: The city council may adopt policies and procedures related to site specific credits or developer reimbursements for fire protection impact fees. Project improvements normally required as part of the development approval process are not eligible for credits against impact fees. (Ord. 2007-11, 12-17-2007)

1-8B-8: WATER IMPACT FEES:

A. Imposition Of Water Impact Fees:

1. On or after the effective date hereof, any person who applies for a building permit, or for the extension of a building permit that was issued prior to the effective date hereof, or seeks to obtain a water service connection, is required to pay a water impact fee in the amount specified in this article.

2. No building permit shall be issued, or extension granted, or water service connection allowed, until the water impact fee described in this article has been paid, unless the development for which the permit is sought is exempted by subsection F of this section.

B. Amount Of Water Impact Fee:

1. The amount of the water impact fee shall be fifty five percent (55%) of the amounts set forth in the following water impact fee schedule:

WATER IMPACT FEE SCHEDULE

Residential (per housing unit):

210	Single-family detached	\$5,128.00
230	All other housing types	3.57

Nonresidential (based upon meter size):

<u>Meter Size</u> <u>(Inches)</u>		<u>Capacity Ratio</u>	
0.75	Displacement	1.0	\$ 5,128.00
1.00	Displacement	1.7	8,717.00
1.50	Displacement	3.3	16,922.00
2.00	Compound	5.3	27,178.00
3.00	Compound	10.7	54,869.00
4.00	Compound	16.7	85,637.00

Note: Fees for meters larger than 4 inches will be based on annualized average day demand and the net capital cost per gallon of capacity.

C. Payment Of Water Impact Fee:

1. Any person who applies for a building permit, or applies for the extension of a building permit issued prior to the effective date hereof, or applies for a water connection, shall pay the water impact fee required by this article to the city prior to the issuance or extension of any such permit.

2. All funds paid by a person pursuant to this section shall be identified as water impact fees and shall be promptly deposited in the water impact fee fund described in subsection D of this section.

D. Water Impact Fee Fund:

1. A single water impact fee fund is created, and such fund shall be maintained in an interest bearing account.

2. Such fund shall contain only those water impact fees collected pursuant to this article and any interest which may accrue from time to time on such amounts.

E. Use Of Water Impact Fee Funds:

1. The monies in the water impact fee fund shall be used for capital improvements that are reasonably related to the benefits accruing to the development paying the impact fees for water.

2. Water impact fees may be used to reimburse the city for costs of excess capacity in existing capital facilities, when the excess

capacity has been provided in anticipation of the needs of new development, for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to Montana Code Annotated section 7-6-1602, in a manner that demonstrates the need for the excess capacity. The city may continue to assess an impact fee that recoups costs for excess capacity in an existing facility. Water impact fees used to reimburse the city for the costs to provide the excess capacity must be based on the actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

F. Exemptions From Water Impact Fee:

1. The following types of development shall be exempted from payment of the water impact fee:

a. Reconstruction or replacement of a previously existing residential or commercial unit that does not create any additional residential units.

b. Construction of unoccupied accessory units related to a residential unit.

c. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use where no greater demand for water will be produced over and above those produced by the original building or structure.

d. Projects that the applicant can demonstrate will produce no greater demand for water from such land than existed prior to issuance of such permit.

e. Projects for which a water impact fee has previously been paid in an amount that equals or exceeds the water impact fee that would be required by this article.

f. Any other type of development for which the applicant can demonstrate that the proposed land use and development will produce no more demand for water from such site over and above the water demand for such site prior to the proposed development, or for which the applicant can show that a water impact fee for such site has previously been paid in an amount that equals or exceeds the water impact fee that would be required by this article for such development.

2. Any such claim for exemption must be made no later than the time when the applicant applies for the building permit, or for the extension of a building permit issued prior to the effective date hereof, or for a water connection for the proposed development, and any claim for exemption not made at or before that time shall have been waived.

3. The city manager or his designee shall determine the validity of any claim for exemption pursuant to the criteria set forth in subsection F1 of this section.

- G. **Site Specific Credits And Developer Reimbursements:** The city council may adopt policies and procedures related to site specific credits or developer reimbursements for water impact fees. Project improvements normally required as part of the development approval process are not eligible for credits against impact fees. (Ord. 2007-11, 12-17-2007)

1-8B-9: SEWER IMPACT FEES:

A. **Imposition Of Sewer Impact Fees:**

1. On or after the effective date hereof, any person who applies for a building permit, or for the extension of a building permit that was issued prior to the effective date hereof, or seeks to obtain a sewer service connection, is required to pay a sewer impact fee in the amount specified in this article.

2. No building permit shall be issued, or extension of a building permit granted, or sewer service connection allowed, until the sewer impact fee described in this article has been paid, unless the development for which the permit is sought is exempted by subsection F of this section.

- B. **Amount Of Sewer Impact Fee:** The amount of the sewer impact fee shall be fifty five percent (55%) of the amounts set forth in the following sewer impact fee schedule:

(see following page)

SEWER IMPACT FEE SCHEDULE

Residential (per housing unit):

210	Single-family detached	\$2,708.00
230	All other housing types	1,887.00

Nonresidential (based upon meter size):

<u>Meter Size (Inches)</u>		<u>Capacity Ratio</u>	
0.75	Displacement	1.0	\$ 2,708.00
1.00	Displacement	1.7	4,604.00
1.50	Displacement	3.3	8,937.00
2.00	Compound	5.3	14,354.00
3.00	Compound	10.7	28,979.00
4.00	Compound	16.7	45,229.00

Note: Nonresidential sewer fees are based on water meter size. Fees for water meters larger than 4 inches will be based on annualized average day demand and the net capital cost per gallon of capacity.

C. Payment Of Sewer Impact Fee:

1. Any person who applies for a building permit, or applies for the extension of a building permit that was issued prior to the effective date hereof, or applies for a sewer connection, shall pay the sewer impact fee required by this article to the city prior to the issuance or extension of any such permit.

2. All funds paid by a person pursuant to this section shall be identified as sewer impact fees and shall be promptly deposited in the sewer impact fee fund described in subsection D of this section.

D. Sewer Impact Fee Fund:

1. A single sewer impact fee fund is created, and such fund shall be maintained in an interest bearing account.

2. Such fund shall contain only those sewer impact fees collected pursuant to this article and any interest which may accrue from time to time on such amounts.

E. Use Of Sewer Impact Fee Funds:

1. The monies in the sewer impact fee fund shall be used for capital improvements that are reasonably related to the benefits accruing to the development paying the impact fees for sewer or wastewater service.

2. Sewer impact fees may be used to reimburse the city for costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to Montana Code Annotated section 7-6-1602, in a manner that demonstrates the need for the excess capacity. The city may continue to assess an impact fee that recoups costs for excess capacity in an existing facility. Sewer impact fees used to reimburse the city for the costs to provide the excess capacity must be based on the actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

F. Exemptions From Sewer Impact Fee:

1. The following types of development shall be exempted from payment of the sewer impact fee:

a. Reconstruction or replacement of a previously existing residential or commercial unit that does not create any additional units.

b. Construction of unoccupied accessory units related to a residential unit.

c. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use where no greater demand for sewer capacity will be produced over and above those produced by the original building or structure.

d. Projects that the applicant can demonstrate will produce no greater demand for sewer capacity from such land than existed prior to issuance of such permit.

e. Projects for which a sewer impact fee has previously been paid in an amount that equals or exceeds the sewer impact fee that would be required by this article.

f. Any other type of development for which the applicant can demonstrate that the proposed land use and development will produce no more demand for sewer capacity from such site over and above the sewer capacity for such site prior to the proposed development, or for which the applicant can show that a sewer impact fee for such site has previously been paid in an amount that equals or exceeds the sewer impact fee that would be required by this article for such development.

2. Any such claim for exemption must be made no later than the time when the applicant applies for the building permit, or for the extension of a building permit, or for a sewer connection, for the proposed development, and any claim for exemption not made at or before that time shall have been waived.

3. The city manager or his designee shall determine the validity of any claim for exemption pursuant to the criteria set forth in subsection F1 of this section.

- G. **Site Specific Credits And Developer Reimbursements:** The city council may adopt policies and procedures related to site specific credits or developer reimbursements for sewer impact fees. Project improvements normally required as part of the development approval process are not eligible for credits against impact fees. (Ord. 2007-11, 12-17-2007)

1-8B-10: PARK IMPACT FEES:

A. Imposition Of Park Impact Fees:

1. On or after the effective date hereof, any person who applies for a residential building permit, or for the extension of a residential building permit issued before the effective date hereof, is required to pay a park impact fee in the amount specified in this article.

2. No residential building permit shall be issued, or no extension of a residential building permit that was issued before the effective date hereof shall be allowed, until the park impact fee described in this article has been paid, unless the development for which the permit is sought is exempted by subsection F of this section.

- B. Amount Of Park Impact Fee:** The amount of the park impact fee shall be fifty five percent (55%) of the amounts set forth in the following park impact fee schedule:

PARK IMPACT FEE SCHEDULE

Residential (per housing unit):

210	Single-family detached	\$831.00
230	All other housing types	579.00

C. Payment Of Park Impact Fee:

1. Any person who applies for a residential building permit, or applies for the extension of a residential building permit that was issued prior to the effective date hereof, shall pay the park impact fee required by this article to the city prior to the issuance or extension of any such permit.

2. All funds paid by a person pursuant to this section shall be identified as park impact fees and shall be promptly deposited in the park impact fee fund described in subsection D of this section.

D. Park Impact Fee Fund:

1. A single park impact fee fund is created, and such fund shall be maintained in an interest bearing account.

2. Such fund shall contain only those park impact fees collected pursuant to this article and any interest which may accrue from time to time on such amounts.

E. Use Of Park Impact Fee Funds:

1. The monies in the park impact fee fund shall be used for capital improvements that are reasonably related to the benefits accruing to the development paying the impact fees for parks.

2. Park impact fees may be used to reimburse the city for costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to Montana Code Annotated section 7-6-1602, in a manner that demonstrates the need for the excess capacity. The city may continue to assess an impact fee that recoups costs for excess capacity in an existing facility. Park impact fees used to reimburse the city for the costs to provide the excess capacity must

be based on the actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

F. Exemptions From Park Impact Fee:

1. The following types of development shall be exempted from payment of the park impact fee:

a. Reconstruction or replacement of a previously existing residential unit that does not create any additional residential units.

b. Construction of unoccupied accessory units related to a residential unit.

c. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use where no greater demand for parks will be produced over and above those produced by the original building or structure.

d. Projects that the applicant can demonstrate will produce no greater demand for parks from such land than existed prior to issuance of such permit.

e. Projects for which a park impact fee has previously been paid in an amount that equals or exceeds the park impact fee that would be required by this article.

f. Any other type of development for which the applicant can demonstrate that the proposed land use and development will produce no more use of parks from such site over and above the use of parks for such site prior to the proposed development, or for which the applicant can show that a park impact fee for such site has previously been paid in an amount that equals or exceeds the park impact fee that would be required by this article for such development.

2. Any such claim for exemption must be made no later than the time when the applicant applies for the building permit, or for the extension of a building permit issued prior to the effective date hereof, for the proposed development, and any claim for exemption not made at or before that time shall have been waived.

3. The city manager or his designee shall determine the validity of any claim for exemption pursuant to the criteria set forth in subsection F1 of this section.

- G. **Site Specific Credits And Developer Reimbursements:** The city council may adopt policies and procedures related to site specific credits or developer reimbursements for park impact fees. Project improvements normally required as part of the development approval process are not eligible for credits against impact fees. (Ord. 2007-11, 12-17-2007)

1-8B-11: ADMINISTRATIVE FEE:

- A. **Imposition Of Impact Fee Administrative Fees:** Any person who is responsible to pay an impact fee under this article shall also pay a fee for the administration of the impact fee to the city when the impact fee is paid.
- B. **Amount Of Impact Fee Administrative Fee:** The amount of the impact fee administrative fee shall be five percent (5%) of the impact fee paid.
- C. **When Impact Fee Administrative Fee Paid:**
1. Any person who pays an impact fee under this article shall also pay the impact fee administrative fee to the city when the impact fee is paid.
 2. All funds paid by a person pursuant to this section shall be identified as impact fee administrative fees and shall be promptly deposited in the impact fee administrative fee fund described in subsection D of this section.
- D. **Impact Fee Administrative Fee Fund:**
1. A single impact fee administrative fee fund is created, and such fund shall be maintained in an interest bearing account.
 2. Such fund shall contain only those impact fee administrative fees collected pursuant to this section and any interest which may accrue from time to time on such amounts.
- E. **Use Of Impact Fee Administrative Fund Fees:** The monies in the impact fee administrative fee fund shall be used for the administra-

tion of impact fees pursuant to the provisions in Montana Code Annotated title 7, chapter 6, part 16. (Ord. 2007-11, 12-17-2007)

1-8B-12: CREDITS AGAINST IMPACT FEES:

- A. Pro Rata Credit: After the effective date hereof, all mandatory or voluntary monetary contributions for, land or easement dedications for, or acquisition or construction of, capital improvements by an applicant in connection with a proposed development shall result in a pro rata credit against the impact fee for the same type of service or facility otherwise due for such development, except that no such credit shall be awarded for:
1. Projects not listed on the impact fee capital improvements program; or
 2. Land or easement dedications for, or acquisition or construction of, project related improvements required as a condition of preliminary plat approval, or other approval, of a development or subdivision; or
 3. Any voluntary land or easement dedications not accepted by the city; or
 4. Any voluntary acquisition or construction of improvements not approved, in writing, by the city prior to commencement of the acquisition or construction.
- B. Application: In order to obtain a credit against development impact fees otherwise due, an applicant must submit a written offer to make a specific monetary contribution for, to dedicate to the city specific parcels of qualifying land or easements, or to acquire or construct specific capital improvements in accordance with all applicable state or city design and construction standards, and must specifically request a credit against such impact fees. Such written request must be made on a form provided by the city, must contain a statement under oath of the facts that qualify the applicant to receive a credit, must be accompanied by documents evidencing those facts, and must be filed not later than the initiation of construction of improvements or the acceptance by the city of monetary contributions, land or easement dedications, or the applicant's claim for the credit shall be waived. The granting of credit shall not occur without the approval of the city council.

- C. Calculation Of Credit: The credit due to an applicant shall be calculated and documented as follows:
1. Credit for qualifying land or easement dedications shall, at the applicant's option, be valued at:
 - a. One hundred percent (100%) of the most recent assessed value for such land as shown in the records of the city assessor; or
 - b. That fair market value established by a private appraiser acceptable to the city in an appraisal paid for by the applicant.
 2. In order to receive credit for qualifying acquisition or construction of capital improvements, the applicant shall submit complete engineering drawings, specifications, and construction cost estimates to the city. The city shall determine the amount of credit due based on the information submitted, or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the city.
- D. Approved Credits Become Effective: Approved credits shall become effective at the following times:
1. Approved credit for land or easement dedications shall become effective when the land has been conveyed to the city in a form acceptable to the city, and at no cost to the city, and has been accepted by the city council. When such conditions have been met, the city shall note that fact in the credit record maintained by the city finance department. Upon request of the credit holder, the city shall send the credit holder a letter stating the credit balance available to him (or her).
 2. Approved credits for the acquisition or construction of capital improvements shall generally become effective when:
 - a. All required construction has been completed and has been accepted by the city; and
 - b. A suitable maintenance and warranty bond has been received and approved by the city; and
 - c. All design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable city and state procedures.

However, approved credits for the construction of improvements may become effective at an earlier date if the applicant posts security in the form of a performance bond, irrevocable letter of credit, or escrow agreement, and the amount and terms of such security are accepted by the city. At a minimum, such security must be in the amount of the approved credit or an amount determined to be adequate to allow the city to construct the improvements for which the credit was given, whichever is higher. When such conditions have been met, the city shall note that fact in the credit record maintained by the city finance department. Upon request of the credit holder, the city shall also send the credit holder a letter stating the credit balance available to him (or her).

- E. **Use Of Credit:** Approved credits may be used to reduce the amount of impact fees due from any proposed development for the same type of service or facility for which the applicant made a monetary contribution, dedicated land or easements, or acquired or constructed improvements, until the amount of the credit is exhausted. Each time a request to use credit from a mandatory or voluntary contribution, dedication, acquisition, or construction is presented to the city, the city shall reduce the amount of the impact fee of the same type otherwise due from the applicant and shall note in the city records the amount of credit remaining, if any. In the case of a mandatory contribution, dedication, acquisition, or construction, any credit in excess of the amount of the impact fee otherwise due under this article shall be deemed excess credit that is remaining and available for use by the applicant. In the case of a voluntary contribution, dedication, acquisition, or construction, any credit in excess of the amount of the impact fee of the same type and applicable to the project, shall be deemed excess credit that is remaining and available for use by the applicant. Upon request of the credit holder, the city shall also send the credit holder a letter stating the amount of credit remaining to him (or her).
- F. **Use Of Credit Against Other Fees:** Approved credit shall only be used to reduce the amount of development impact fees of the same type otherwise due under this article and shall not be paid to the applicant in cash or in credit against any impact fees for a different type of facility or service or against any other monies due from the applicant to the city, except as described in subsection G of this section.
- G. **Request For Reimbursement:** If the amount of approved credit for a mandatory contribution, dedication, acquisition, or construction exceeds the amount of the impact fees of the same type otherwise

due under this article, the applicant may request, in writing, that the city provide for reimbursement of any excess credit to the applicant in cash. Such written request must be filed not later than the initiation of construction of improvements, or the acceptance by the city of contributions or land or easement dedications, or the applicant's claim shall be waived. Upon receipt of such a written request, the city may, at its discretion:

1. Arrange for the reimbursement of such excess credit from the impact fee fund for the same type of service or facility from impact fees paid by others; or

2. Reject the request for cash and provide credit. Such excess credit shall be valued at one hundred percent (100%) of actual developer costs for the excess improvements, or at the actual appraised value of such excess improvements, at the city's option.

- H. **Transfer Of Credit:** Credit may be transferred from one holder to another by any written instrument clearly identifying the credit issued under subsection C of this section that is to be transferred; provided, that such instrument is signed by both the transferor and transferee, and that the document is delivered to the city for registration of the change in ownership.
- I. **Means And Method Of Valuation:** The city council shall determine a means and method of valuation of the proposed dedication or constructions to establish credits against future impact fee revenue if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development. (Ord. 2007-11, 12-17-2007)

1-8B-13: MISCELLANEOUS PROVISIONS:

- A. **Interest Earned:** Interest earned on monies in any impact fee fund shall be considered part of such fund, and shall be subject to the same restrictions on use applicable to the impact fees deposited in such fund.
- B. **Use Of Funds:** No monies from any impact fee fund shall be spent for operations or maintenance of any facility or to cure deficiencies in public facilities existing on the effective date hereof.
- C. **Project Improvements:** Nothing in this article shall restrict the city from requiring an applicant to construct reasonable project

improvements required to serve the applicant's project, whether or not such improvements are of a type for which credit is available under section 1-8B-12 of this article.

- D. Records: The city shall maintain accurate records of impact fees paid, including the name of the person paying such fees, the project for which the fees were paid, the date of payment of each fee, the amounts received in payment for each fee, and any other matters that the city deems appropriate or necessary to the accurate accounting of such fees, and such records shall be available for review by the public during city business hours.
- E. Annual Proposed Capital Improvement Program: At least once during each fiscal year of the city, the city manager shall present to the city council a proposed capital improvements program for the major street system, the city fire protection system, the city water and wastewater systems, and the city park system, and such capital improvements program shall assign monies from each impact fee fund to specific projects and related expenses for improvements to the type of facilities or services for which the fees in that fund were paid. Any monies, including any accrued interest, not assigned to specific projects within such capital improvements program and not expended shall be retained in the same impact fee fund until the next fiscal year. The impact fee capital improvements program shall be adopted by the city council as a supplemental document to the city budget. The impact fee capital improvements program shall anticipate project expenditures and fund revenues for a five (5) year period. The individual fee funds shall maintain a positive fiscal balance. The program may be amended by a majority vote of the city council.
- F. Mistakes Or Misrepresentations:
1. Overpayments: If an impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by an applicant shall be refunded by the city to the applicant within thirty (30) days after the city acceptance of the recalculated amount, with interest at the rate of five percent (5%) per annum since the date of such overpayment.
 2. Underpayments: Any amounts underpaid by the applicant shall be paid to the city within thirty (30) days after the city acceptance of the recalculated amount, with interest at the rate of five percent (5%) per annum since the date of such underpayment.

3. City Error: In the event the underpayment is caused by an error attributed solely to the city, the applicant shall pay the recalculated amount without interest.

4. Issuance Of Additional Permits Or Approvals: In the case of an underpayment to the city, the city shall not issue any additional permits or approvals for the project for which the development impact fee was previously paid until such underpayment is corrected, and if amounts owed to the city are not paid within such thirty (30) day period, the city may also repeal any permits issued in reliance on the previous payment of such impact fee and refund such fee to the then current owner of the land.

G. Update: The impact fees described in this article and the administrative procedures and manual of this article shall be updated at least once every two (2) fiscal years to ensure that:

1. The demand and cost assumptions underlying such fees are still valid;

2. The resulting fees do not exceed the actual cost of constructing improvements that are of the type for which the fee was paid and that are required to serve new development;

3. The monies collected or to be collected in each impact fee fund have been and are expected to be spent for improvements of the type for which such fees were paid; and

4. Such improvements will benefit those developments for which the fees were paid.

H. Judicial Action Or Proceeding: Any judicial action or proceeding to attack, review, set aside or annul the reasonableness, legality or validity of any impact fee must be filed within ninety (90) days following the date of imposition of the fee or the final determination of the city council, whichever is the later. (Ord. 2007-11, 12-17-2007)

1-8B-14: **APPEAL:**

A. Right To Appeal: The person charged an impact fee under the provisions of this article may appeal the charge if the person believes an error has been made.

B. Appeal Procedure:

1. The person making the appeal shall file with the city a written notice of appeal that sets forth the basis for the appeal including the alleged error.
2. The person making the appeal shall pay the city an appeal fee of one hundred dollars (\$100.00) at the time of filing the written notice of appeal.
3. The city manager shall fix a time and place for hearing the appeal, and the city shall mail notice of the hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in such notice given by the city. The determination of the city council shall be final.
4. The appeal shall be heard and determined by the city council within sixty (60) days of the filing of written notice of appeal. (Ord. 2007-11, 12-17-2007)