

**ORDINANCE Ord #2015-003**

**AN ORDINANCE TO ADOPT  
CHAPTER 2, ARTICLE 6. FINANCE  
TO THE CITY OF POLSON BOOK OF ORDINANCES**

**WHEREAS**, the City Commission of Polson has determined that it is in the best interests of the citizens of Polson to reestablish, rewrite and reauthorize the Ordinances of the City;

**WHEREAS**, the Commission recognizes the most expeditious way of adopting such Ordinances is by adoption in a near sequential manner over a term of months to give the Commission and the public time to review the material;

**WHEREAS**, it appears in the best public interest that the following ordinances be adopted for the City of Polson;

**NOW, THEREFORE, BE IT ORDAINED** by the City of Polson that the following Articles of the Ordinances of the City of Polson be adopted in full as attachments hereto:

**ARTICLE 6. FINANCE**

The clerk is hereby instructed to codify this Ordinance and to place the same in the Book of Ordinances of the City of Polson.

Date:02/18/2015

First Reading:      5   ayes    \_\_\_ nays    \_\_\_ abstentions      2   absent

Date:03/02/2015

Second Reading:     5   ayes    \_\_\_ nays    \_\_\_ abstentions      2   absent

Effective Date:     04/02/2015  

\_\_\_\_\_  
Mayor Heather Knutson

Attest:

\_\_\_\_\_  
City Clerk Cora E. Pritt

**ARTICLE 6. FINANCE**

**DIVISION 1. - GENERALLY**

**DIVISION 2. - BUDGET**

**DIVISION 3. - COLLECTION OF TAXES**

**DIVISION 4. - ACQUISITION AND TRANSFER OF CITY PROPERTY**

**DIVISION 5. - SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND**

**DIVISION 6. - URBAN RENEWAL, TAX INCREMENT, AND ECONOMIC DEVELOPMENT DISTRICTS**

**DIVISION 7. - BUSINESS IMPROVEMENT DISTRICT PROGRAMS**

**DIVISION 8. - IMPACT FEES**

**DIVISION 9. - INSUFFICIENT FUNDS CHECKS**

**DIVISION 1. GENERALLY**

Sec. 2.06.100. Transfer of funds: when authorized.

Sec. 2.06.110. Depository designated.

Secs. 2.06.120-2.06.199. Reserved.

Sec. 2.06.100. Transfer of funds; when authorized.

The commission shall have power to transfer funds or moneys collected under the general levy, or for fees, licenses or fines, from any fund into which they may have been paid, to any other fund; provided, however, there shall be a surplus in the fund from which such transfer is made.

Sec. 2.06.110. Depository designated.

The commission shall, from time to time, and upon consideration of bids therefore, declare by motion and vote a banking institution located in and/or doing business in the city, which shall serve as the official depository of the funds of the city.

Secs. 2.06.120-2.06.199. Reserved.

**DIVISION 2. BUDGET**

Sec. 2.06.200. Budget administration and oversight.

Sec. 2.06.210. Budget operating guidelines.

Sec. 2.06.220. Budget status reporting.

Sec. 2.06.230. Minimum level of budgeted general fund unreserved fund balance.

Secs. 2.06.240-2.06.299. Reserved.

Sec. 2.06.200. Budget administration and oversight.

A. Responsibilities of the city commission.

1. To adopt the annual budget.
2. To amend the budget, as necessary.
3. To review budget status reports, as presented.
4. To review claims payable listings, as presented.

B. Responsibilities of the city manager.

1. To execute the budget that has been adopted by the commission.
2. To propose and schedule budget amendments, as necessary.
3. To report to the commission on the financial condition of the city and the status of the budget, according to the methods described in section 2.06.330

Sec. 2.06.210. Budget operating guidelines.

A. Once the approved budget has been adopted, the city manager has the authority to administer all city accounts, in accordance with the approved budget. Within the any fund, the city manager may re-allocate appropriation authority among line items as long as the total appropriation amount is not increased.

B. In addition, the city commission hereby delegates appropriation and budget amendment authority to the city manager for the expenditures from the following funds: debt service funds; fee-based budgets; trust funds; federal, state and private grants accepted and approved by the city commission; special assessments; moneys borrowed during the year; proceeds from sale of land; and funds for gifts or donations.

C. Through the annual appropriation resolution each year, the city commission will authorize and re-appropriate the unexpended balance of capital improvement program items and building repair and maintenance items previously budgeted which have not been completed.

Sec. 2.06.220. Budget status reporting.

The city manager will compile the following reports and make them available to the commission, city departments and the public:

1. Monthly claims payable listings by account.
2. Monthly budget-to-actual expenditure report.
3. Quarterly summary of revenues and expenditures report.

Sec. 2.06.230. Minimum level of budgeted general fund unreserved fund balance.

The city manager will recommend and the commission will adopt an approved budget that results in a year-end general fund unreserved fund balance of no less than 16 2/3 percent of estimated general fund expenditures. If the commission desires to adopt or amend the budget in a way that decreases the general fund unreserved fund balance to a level below 16 2/3 percent of estimated general fund expenditures, they may do so after holding a separate public hearing to state why it is in the best interest of the city to do so. At no time may a budget be adopted or amended that results in a year-end general fund unreserved fund balance of less than five percent of estimated general fund expenditures. This limit does not apply in case of an emergency, pursuant to state law.

Secs. 2.06.240-2.06.299. Reserved.

### **DIVISION 3. COLLECTION OF TAXES**

Sec. 2.06.300. Tax collection by county: when authorized.  
Sec. 2.06.301. city manager may delegate duties.  
Sec. 2.06.310. Annual city tax levy determination.  
Sec. 2.06.320. Monthly settlement and collection from county treasurer.  
Sec. 2.06.330. Annual tax reports to commission: contents.  
Sec. 2.06.340. Special assessments—Collection procedure.  
Sec. 2.06.350. Same—Procedure for levy.  
Sec. 2.06.360. Same—Payable when: delinquency penalty.  
Sec. 2.06.370. Same—Delinquency report.  
Sec. 2.06.371. Delinquent assessments—Declaration by resolution: conditions.  
Sec. 2.06.372. Same—Certificates to county clerk and county treasurer.  
Sec. 2.06.373. Same—Notice publication, if required.  
Sec. 2.06.374. Same—Payment procedure.  
Sec. 2.06.375. Delinquent tax sales: city manager authority and duties.  
Sec. 2.06.376. Reinstating special assessments.  
Sec. 2.06.377. Special improvement districts: annual reports.  
Secs. 2.06.378-2.06.399. Reserved.

Sec. 2.06.300. Tax collection by county; when authorized.

All taxes levied by the city of Polson for general, municipal special and administrative purposes shall be collected by the county treasurer, as provided by MCA 7-6-4413.

Sec. 2.06.301. city manager may delegate duties.

The city manager may delegate any and all duties required by this Division. Responsibility to delegate and to carry out such duties shall remain on the city manager.

Sec. 2.06.310. Annual city tax levy determination.

The city commission must, by the second Monday in August, by resolution, determine the amount of the city taxes for all purposes to be levied and assessed on the taxable property in the city for the current fiscal year, and the clerk of the commission must duly certify to the county clerk a copy of such resolution, and the county treasurer must collect such taxes, as provided by MCA 7-6-4413. Such determination may only be delayed if the Montana Department of Revenue fails to supply current assessment values to the city.

Sec. 2.06.320. Monthly settlement and collection from county treasurer.

The city manager or his/her designee shall, after the twelfth day of every month, settle with and collect from the county treasurer all taxes for general, municipal and administrative purposes collected by the county treasurer.

Sec. 2.06.330. Annual tax reports to commission; contents.

A. On or before the second regular commission meeting in January of each and every year, the city manager shall make a report to the commission showing:

1. Total assessable value of property within the city;
2. Taxable value of property within the city;

3. Rate of taxation for the city for general, municipal and administrative purposes;
4. Total amount of taxes due the city for the preceding calendar year;
5. Amount collected;
6. Amount delinquent.

B. On or before the second regular commission meeting in August of each and every year, the city manager shall make a like report to the commission of the city.

C. The reports so made shall likewise contain a statement showing taxes delinquent and due and owing to the city for prior years.

Sec. 2.06.340. Special assessments—Collection procedure.

All special assessments, of whatever kind and character, heretofore levied, or which may be hereafter levied, by the commission of the city to defray the cost of any special improvements in the city, or special assessments heretofore levied or hereafter levied for special purposes, as provided by law and this Code, shall be collected by the county on behalf of the city. The county treasurer shall make these collections in the same manner and at the same time as general taxes are collected by the county treasurer. The city manager shall make proper distribution to the various funds for which such collections are made of all money collected.

Sec. 2.06.350. Same—Procedure for levy.

Within two days after the passage and adoption of any resolution of the city commission levying and assessing any special improvement assessment, the city clerk shall deliver the original or certified copy of such resolution of such levy and assessment to the city manager, and the city manager shall thereupon enter and spread the assessments so made in the special improvement assessment book, against the property against which the assessment is a lien.

Sec. 2.06.360. Same—Payable when; delinquency penalty.

All special assessments, or installments of special assessments, heretofore or hereafter levied and assessed for any purpose whatsoever, duly and regularly levied by resolution according to law, shall be payable in equal installments in the same manner as general property taxes, and in the event the same are not paid on or before said date, the same shall become delinquent and shall be subject to a penalty of two percent, and shall bear interest at the rate of 5/6<sup>th</sup> of one percent per month from the date of delinquency.

Sec. 2.06.370. Same—Delinquency report

A. On or before the second regular commission meeting in January of each and every year, the city manager shall make to, and file with, the city commission a report showing the delinquencies for that year, and setting forth:

1. The name of the owner;
2. The description of the lot or parcel of property;
3. The amount of delinquent assessments for the current year;
4. The number and amount of unpaid installments of such delinquent special assessments;
5. The amount due and delinquent for other years, if any.

Sec. 2.06.371. Delinquent assessments—Declaration by resolution; conditions.

When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments shall, at the option of the commission of the city, by appropriation resolution duly adopted, become delinquent. The commission shall thereupon, at its option, by appropriation resolution duly adopted, declare all such unpaid special assessments, or installment of such special assessments, and all subsequent installments of such special assessments, due, payable and delinquent. The whole property may be sold the same as other property is sold for taxes. It is within the sound discretion of the city to choose whether to collect delinquent assessments itself or to collect the same as are general taxes payable through the county.

Sec. 2.06.372. Same—Certificates to county clerk and county treasurer.

A. Before January 1 (or before July 1, if the December certification has been omitted or incompletely or improperly made), the city manager shall certify, if necessary, all delinquent taxes and assessments to the county clerk and to the county treasurer for collection as provided by law.

B. Such certificate shall contain:

1. The description of each lot or parcel of land on which any tax or assessment has become delinquent, and against which it is a lien;
2. The name and address of the person to whom assessed;
3. The date when the same became delinquent;
4. The amount of the delinquent tax or assessment;
5. The penalty to be added thereto;
6. The total amount of such delinquent tax or assessment with penalty added; and
7. If any special assessment is payable in installments, and any installment thereof becomes delinquent, the amount of such delinquent installment shall be included in such certificate, provided that in the event the city commission shall by resolution declare the whole of the assessment remaining unpaid to be delinquent, then the whole of the assessment remaining unpaid shall be included in such certificate.

Sec. 2.06.373. Same—Notice publication, if required.

A. Within ten days of the time of filing the certificates required in section 2.06.372, the city manager shall publish if required, in not less than one issue of the daily newspaper of largest circulation in the city, a notice specifying:

1. That the city manager has certified to the county treasurer a complete delinquent list of all persons and property in the city, against which delinquent taxes are a lien and that the county treasurer will sell such property at a later date at public auction unless prior to such auction all delinquent taxes, together with interest, penalties and costs thereon due, are paid;
2. That a complete delinquent list of all persons and property in the city now owing taxes is on file in the office of the county treasurer and in the office of the city manager and is subject to public inspection and examination;

3. That the date of the sale shall be as determined by the county treasurer;
4. That delinquent assessments may be reinstated by complying with the provisions of MCA 7-12-4184.

Sec. 2.06.374. Same- Payment procedure

All delinquent assessments certified to the county clerk and county treasurer shall be paid to and collected, with penalty and interest, by the county treasurer, and that the county treasurer shall account therefor and pay the same to the city manager, as provided by MCA 7-12-4184.

Sec. 2.06.375. Delinquent tax sales; city manager authority and duties.

At the time and place that property in the county upon which delinquent taxes are a lien is sold, at public auction, as provided by MCA 15-17-122, the city manager shall attend each delinquent tax sale, and shall then and there take such proceedings as the commission or city manager may direct, to protect the interests of the city in and to any property sold for delinquent taxes, and in which the city may have an interest by reason of delinquent special assessments which are a lien thereon, and the city may at such delinquent tax sale purchase, and may, under and by virtue of the provisions of MCA 7-12-4227 and 7-12-4228, bid in said property, and have certificate of sale issued to the city; or the city may, at any time subsequent to said delinquent tax sales, or either of them, acquire any of the property struck off to the county at said delinquent tax sales, as provided by said MCA Chapters. 7-12 and 15-17 hereinbefore referred to, and under such terms and conditions as the commission may authorize and direct; that any properties so acquired shall be paid for from the revolving fund, if and when such revolving fund is provided by the commission of the city, as provided by MCA Ch. 7-12.

Sec. 2.06.376. Reinstating special assessments.

When any special assessment, or installment or installments of special assessments, have become delinquent, and are so declared by appropriate resolution of the city commission, and have been certified to the county clerk and county treasurer for collection, as provided in this division, the commission may nevertheless, at its option, upon the payment to the city manager of the assessment, or installment or installments of special assessments, with penalty and interest, up to date, by appropriate resolution, be withdrawn from the county treasurer, and cancelled from the treasurer's records, and reinstated in the office of the city manager in the special improvement assessment book. Such withdrawal and reinstatement may be had and made at any time before or after the sale of the property for delinquent taxes, and before tax deed therefor has been executed. When the commission shall have passed a resolution as contemplated in this division, and when a taxpayer shall have complied with all the conditions therein specified, the city manager shall file with the county clerk and the county treasurer a certified copy of such resolution, which shall be the county treasurer's authority to cancel and withdraw such delinquent special assessments as may be therein specified. The city manager shall then reinstate such assessments or installments on the special improvement assessment book, as the city manager is directed in the resolution of the commission to reinstate.

Sec. 2.06.377. Special improvement districts; annual reports.

- A. At the second regular commission meeting in January of each year, or at such time as the commission may direct, the city manager shall make a written report to the

commission showing the status of the assessments and bonds outstanding against the several special improvement districts, setting forth the following:

1. Amount of special assessment levied against each district;
2. Amount of bonds or warrants issued in payment of the cost of the improvement;
3. Bonds or warrants which have been paid;
4. Bonds or warrants outstanding;
5. Special improvement assessments outstanding but not delinquent;
6. Delinquent special assessments, if any, and the property against which such delinquent special assessments are a lien.

Secs. 2.06.378-2.06.399. Reserved.

#### **DIVISION 4. ACQUISITION AND TRANSFER OF CITY PROPERTY**

Sec. 2.06.400. Authorization for city to obtain property.

Sec. 2.06.410. Appraisal required for certain purchases of real property or conservation easements.

Sec. 2.06.420. Authorization to sell and exchange city property.

Sec. 2.06.430. Requirements for certain sales.

Sec. 2.06.440. Terms of sale.

Sec. 2.06.450. Current appraisal required for certain sales.

Sec. 2.06.460. Use of proceeds of property disposition.

Secs. 2.06.470-2.06.499. Reserved.

Sec. 2.06.400. Authorization for city to obtain property.

The city commission has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to purchase, receive by donation or exchange, or lease any real or personal property necessary for the use of the city and to preserve, take care of, manage, and control the same.

Sec. 2.06.410. Appraisal required for certain purchases of real property or conservation easements.

Unless otherwise provided by law, the city may not purchase real property in an amount in excess of \$50,000.00 or a conservation easement using public funds in an amount in excess of \$40,000.00 unless the value of the property or conservation easement has been previously estimated by a disinterested certified general real estate appraiser selected by the city manager.

Sec. 2.06.420. Authorization to sell and exchange city property.

A. The city commission has the power to sell, trade, or exchange any real or personal property, however acquired, belonging to the city that is not necessary to the conduct of city business or the preservation of its property.

B. Whenever the city purchases equipment, as provided in MCA 7-5-4301 through 7-5-4310, city equipment that is not necessary to the conduct of the city business may be

traded in as part of the purchase price or may be sold at public auction, in the discretion of the city manager.

C. Any sale, trade, or exchange of real or personal property must be accomplished under the provisions of this division. In an exchange of real property, the properties must be appraised, and an exchange of city property may not be made unless property received in exchange for the city property is of an equivalent value. If the properties are not of equivalent values, the exchange may be completed if a cash payment is made in addition to the delivery of title for property having the lesser value.

D. If the city owns property containing a historically significant building or monument, the city may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

1. Requires the property to be preserved in its present or restored state upon any subsequent transfer; and
2. Provides for the reversion of the property to the city for noncompliance with conditions attached to the transfer.

#### Sec. 2.06.430. Requirements for certain sales.

When the city commission, after public hearing, has determined by a two-thirds vote of all the members that any real property owned by the city is not needed for public use, or that the public interest may be furthered, the city may sell such property by bid, auction with reserve, or negotiated sale or exchange, subject, where appropriate, to a minimum price established through an appraisal that certifies the value of such property. Notice of sale, exchange, or auction shall be published as provided in MCA 7-1-4127. The city may terminate the sale procedures used at any time and may reinstate the same or different procedures at a later date.

#### Sec. 2.06.440. Terms of sale.

A. Except as provided in section 2.06.420.D, a sale under this division must be for cash or on terms that the city commission may approve, provided that at least 20 percent of the purchase price is paid in cash. All deferred payments on the purchase price of any property sold must bear interest at a market rate, payable annually, and may be extended over a period of not more than five years.

B. Subject to section 2.06.420.D, a sale may not be made for less than 90 percent of the appraised value.

C. Subject to section 2.06.420.D, the title to any property sold may not pass from the city until the purchaser or the purchaser's assigns have paid the full amount of the purchase price into the city treasury for the use and benefit of the city.

#### Sec. 2.06.450. Current appraisal required for certain sales.

Unless otherwise provided, no sale of real property shall be made of any property unless it has been appraised within one year prior to the date of the sale.

Sec. 2.06.460. Use of proceeds of property disposition.

Subject to grant or funding agency limitations, the funds derived from property disposed of in accordance with this division, in the discretion of the city commission, may be credited to any account that is in the best interest of the city.

Secs. 2.06.470-2.06.499. Reserved.

## **DIVISION 5. SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND**

Sec. 2.06.500. Established: name and purpose.

Sec. 2.06.510. Sources of funds.

Sec. 2.06.520. Loans from revolving fund to special improvement district fund; conditions.

Sec. 2.06.530. Liens imposed for amounts loaned.

Sec. 2.06.540. Use of surplus in fund.

Sec. 2.06.550. Levy of tax: method and effect.

Sec. 2.06.560. Statutory authority for division provisions.

Secs. 2.06.570-2.06.599. Reserved.

Sec. 2.06.500. Established; name and purpose.

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 or districts created after February 25, 1929, and the interest thereon, as it becomes due, there is created and established a fund to be known and designated as "special improvement district revolving fund."

Sec. 2.06.510. Sources of funds.

A. For the purpose of providing funds for the special improvement district revolving fund, the commission:

1. *Transfer from general fund.* 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 or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered and shall be loans from such general fund to the special improvement district revolving fund; and

2. *Tax levy.* Shall, in addition to such transfers from the general fund, or in lieu thereof, levy and collect for the special improvement district revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property of the city, as shall be necessary to meet the financial requirements of the fund, such levy, together with such transfer, not to exceed in any one year five percent of the principal amount of the then-outstanding special improvement district bonds and/or warrants.

Sec. 2.06.520. Loans from revolving fund to special improvement district fund; conditions.

Whenever any special improvement district bond or warrant, or interest thereon, issued for improvements made in special improvement districts created after February 25, 1929, 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 commission, 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 commission 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.

Sec. 2.06.530. 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 moneys thereafter coming into such special improvement district fund to the amount of such loan, together with interest thereon from the time it was made 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 moneys 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 moneys as may be necessary to pay such loan shall, by order of the commission, 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 moneys remaining in such special improvement district fund shall, by order of the commission, be transferred to and become a part of the special improvement district revolving fund.

Sec. 2.06.540. Use of surplus in fund.

Whenever there is, in the special improvement district revolving fund, an amount in excess of the amount which the commission deems necessary for the payment or redemption of maturing bonds or warrants, or interest thereon, the commission 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 for delinquent taxes or assessments, or both, and against which property there then are 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 commission 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 commission at a meeting called for that purpose, as hereinbefore provided.

Sec. 2.06.550. Levy of tax; method and effect.

The special tax to be levied, as herein provided in section 2.06.510, shall be in addition to the tax for general, municipal and administrative purposes, and the levy shall be made by the commission at the time and by the resolution passed and adopted by the commission.

Sec. 2.06.560. Statutory authority for division provisions.

This division is passed pursuant to the power and authority vested in the commission by Chapter 24, Laws of Montana, 21st Session, 1929, entitled:

"An Act Relating to Special Improvement Districts in Cities and Towns; Authorizing the Creation, Maintenance and Use of a Special Improvement District Revolving Fund in any city or Town for the Purpose of Securing Prompt Payment of Special Improvement District Bonds and Warrants and Interest Thereon, and Requiring Levy of Taxes When Necessary for the Financial Requirements of Such Fund," and the interpretation thereof by the Supreme Court of the state in the case of *Stanley v. Jeffries*, 86 Mont. 114. The statute is now codified as MCA 7-12-4221 et seq.

Secs. 2.06.570-2.06.599. Reserved.

## **DIVISION 6. URBAN RENEWAL, TAX INCREMENT, AND ECONOMIC DEVELOPMENT DISTRICTS**

Sec. 2.06.600. Urban renewal, tax increment, and economic development districts: creation.

Sec. 2.06.610. Costs which may be paid from tax increments.

Sec. 2.06.620. Use of tax increments for bond payments.

Sec. 2.06.630. Contents of ordinance.

Sec. 2.06.640. Termination of tax increment financing provisions.

Sec. 2.06.650. Administration.

Secs. 2.06.660-2.06.699. Reserved.

Sec. 2.06.600. Urban renewal, tax increment, and economic development districts; creation.

A. The city commission may, from time to time, create by ordinance an urban renewal, tax increment financing, or economic development district pursuant to Title 7, Chapter 15, Parts 42 and 43, MCA, following a public hearing on the proposed district. In order for land to be included in the proposed district, in addition to the requirements of Montana law, it must:

1. Consist of an area with an accurately described boundary;
2. Not be contained within the boundaries of another tax increment financing, urban renewal, or other economic development district with a tax increment provision;
3. Be zoned in accordance for the purposes for which the district will be created and be in compliance with the Polson Growth Policy; and
4. Be determined to be in compliance with all other legal requirements.

- B. The district must have as its purpose only those authorized by law.
- C. Notice of the public hearing on the creation of a proposed district shall be given in accordance with the provisions of MCA 7-15-4215.

Sec. 2.06.610. Costs which may be paid from tax increments.

The district's tax increment may be used to pay for the costs incurred by an authorized urban renewal, tax increment, economic development or authorized infrastructure development project (in that district) as provided by Title 7, Chapter Parts 42 and 43, MCA and as authorized by ordinance of the city commission.

Sec. 2.06.620. Use of tax increments for bond payments.

The tax increments received may be pledged for the payment of the principal of premiums, if any, and interest on bonds which the city may issue for the purpose of providing funds to pay for costs accrued pursuant to section 2.06.610.

Sec. 2.06.630. Contents of ordinance.

- A. Each ordinance creating an urban renewal, tax increment financing, or economic development district shall:
  - 1. Designate each district by number;
  - 2. Set forth a legal description of and map showing the boundaries of the district;
  - 3. Include a plan that describes the district or development project and contains provisions for undertaking and implementing the district or project; and
  - 4. Establish the base year for the calculation of tax increment within the district.

Sec. 2.06.640. Termination of tax increment financing provisions.

An urban renewal or economic development district's tax increment financing provisions shall terminate pursuant to Title 7, Chapter 15, Parts 42 and 43, MCA.

Sec. 2.06.650. Administration.

The urban renewal, tax increment financing, or economic development district programs created pursuant to this division shall be administered by the city commission. The commission shall be advised on matters pertaining to the program by a district board created pursuant to article 5, division 5 of this chapter and may delegate specific authority to such board pursuant to ordinance or resolution.

Secs. 2.06.660-2.06.699. Reserved

**DIVISION 7. BUSINESS IMPROVEMENT DISTRICT PROGRAMS**

Sec. 2.06.700. Purpose and intent.

Sec. 2.06.710. Polson Downtown Business Improvement District (Streetscape Project).  
Secs. 2.06.720-2.06.799. Reserved.

Sec. 2.06.700. Purpose and intent.

The purpose and intent of this division is to provide for the specific program components of any business improvement districts within the city created pursuant to Title 7, chapter 12, part 11, Montana Code Annotated (MCA 7-12-1101 et seq.). The districts may be administered as provided by a single board of trustees for the whole or by individual boards of trustees for each district created pursuant to these ordinances. The purpose of a business improvement district is to serve a public use, promote the health, safety, prosperity, security, and general welfare of the inhabitants of the district and of the people of this state and be of specific benefit to the property within the boundaries of each district.

Sec. 2.06.710. Polson Downtown Business Improvement District (Streetscape Project).

There is hereby created the Polson Downtown Business Improvement District, known commonly as the Streetscape Project, and funding through tax increment financing and bonding is approved. (Ordinance No. 653-January 20, 2010) The boundaries of such district are shown upon such previous Ordinance and adopted herein.

Secs. 2.06.720-2.06.799. Reserved.

## **DIVISION 8. IMPACT FEES**

Sec. 2.06.800. Short title.

Sec. 2.06.810. Findings.

Sec. 2.06.820. Intent.

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Sec. 2.06.840. Definitions.

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Sec. 2.06.870. Imposition of Impact Fees.

Sec. 2.06.880. Calculation of Impact Fee and Impact Fee Schedules.

Sec. 2.06.881. Administration and Collection of Impact Fees.

Sec. 2.06.882. Service Charge.

Sec. 2.06.883. Administrative Process for Impact Fee Re-determinations, refunds, credits, and reimbursements.

Sec. 2.06.884. Judicial Review.

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Sec. 2.06.888. Alternative Collection Method

Sec. 2.06.889. Liberal construction.

Sec. 2.06.890. Severability.

Secs. 2.06.891-2.06.899. Reserved.

Sec. 2.06.800. Short title.

This chapter shall be known and cited as the "Polson Development Impact Fee Ordinance." This Ordinance is a recodification of Ordinance No. 663 as adopted June 18, 2012, in its entirety and as may have been amended thereafter. Changes have been made to reflect recodification and to correct obvious grammatical and punctuation errors.

Sec. 2.06.810. Findings.

The city commission of Polson, Montana (hereinafter "commission") hereby finds and declares that:

A. Polson, Montana, (hereinafter "city") has experienced New Development, including redevelopment, and population growth during the 1990's and 2000's, which development has strained the adequacy of existing sources of funds to provide public facilities to meet the demands created by New Development and redevelopment. The city has experienced an unprecedented rate of New Development in recent years increasing the strain on the city's ability to provide necessary public facilities and services.

B. The Master Plan for Polson, as adopted and amended by the commission and census and population studies predict that growth will continue and will create significant demands for public facilities needed to accommodate New Development; yet this revision of 2012 takes into consideration the current local and national economic situation.

C. The City of Polson's Master Plan and the Capital Improvements Plan, as amended from time to time in conformance with Section 7-6-1602 of the Montana Codes, identify the need for additional public facilities necessary to insure the health, safety and welfare of the residents and property owners in the city. These needs include additional facilities and equipment for park improvements and trails, water system, sanitary sewer system, and fire-rescue which represent essential responsibilities under the police power authority of the city.

D. Impact fees are a reasonable method of regulating New Development to ensure that such New Development pays a proportionate share of the capital costs of public facilities needed to accommodate New Development. The impact fees set forth in this chapter establish a fair and reasonable method of regulating New Development in the city. It is the intent of this chapter that New Development in the city will pay a proportionate share of the average public facility costs reasonably related to and reasonably attributable to the New Development's share of the cost of infrastructure improvements made necessary by the New Development.

E. Funds collected pursuant to this chapter shall be expended only on the type of public facility for which the fees are collected and only for public facilities which have a "rational nexus" to and provide benefit to New Development on which fees are imposed pursuant to this chapter. Funds collected pursuant to this chapter shall not be expended to maintain or repair existing facilities or to correct existing deficiencies in facility systems needed to serve existing development. Impact fees may be imposed for remodeling, rehabilitation, or other improvements to an existing structure or use to the extent of the net increase between the old and new demand.

F. The commission hereby finds and declares that all New Development, as defined herein, within the city generates an increased demand for System Improvements to the water system, sanitary sewer system, and fire-rescue, and that all new Residential

Development within the city also generates an increased demand for park facilities. The commission hereby finds and declares that the System Improvements to be funded by the Impact Fees imposed herein will provide benefit to all New Development in the city.

G. The commission hereby finds and declares that the Impact Fees imposed pursuant to this chapter comply with the requirements of Title 7, Chapter 6, Part 16 of the Montana Codes.

H. The commission has considered the matter of funding additional public facilities, the need for which is reasonably related to New Development and finds that the imposition of updated Impact Fees is critical to the city's ability to provide such facilities. The commission hereby finds and declares that the Impact Fees imposed herein are necessary to protect the public health, safety and welfare of residents and property owners in the city and are a reasonable exercise of the city's police power. Therefore, the commission deems it essential and necessary to adopt this chapter as hereinafter set forth.

I. It is necessary and desirable to collect and clarify all fees related to new development and connection with the utility systems, and to simplify administration thereof.

#### Sec. 2.06.820. Intent.

A. This chapter is intended to address the citywide infrastructure impacts of New Development by imposing the several development fees, from and after the Effective Date hereof, payable no earlier than the date of issuance of a Building Permit if a building permit is required for the development or no earlier than the time of wastewater or water service Connection if any, in an amount based upon the average amount of facility demand attributable to New Development and the average cost of providing the public facilities needed to accommodate New Development, as further set forth herein, and as the same may be amended from time to time. This chapter is intended to allow New Development to help address the burdens of growth. New Development shares in this burden by paying a proportionate share of the reasonably anticipated average costs of public facilities needed to accommodate the demand for additional facilities created by New Development as well as by complying with other appropriate development regulations and approval conditions. This chapter shall not be construed to authorize imposition of Impact Fees for public facility needs attributable to existing development.

B. The Development Impact Fees imposed pursuant to this chapter are based upon the data and calculation methodology incorporated in the "Development Impact Fees, city of Polson, Montana" by TischlerBise, Fiscal and Economic & Planning Consultants, dated February 5, 2007.

#### Sec. 2.06.830. Authority.

The continued imposition and collection of Impact Fees is an exercise of the commissions' charter self-government powers. In addition the commission is exercising its police powers, pursuant to the Montana Constitution. The provisions of this chapter shall not be construed to limit the scope of the city's power necessary to accomplish these purposes.

#### Sec. 2.06.840. Definitions.

As applied in this chapter, the following words and terms shall have the following meaning, unless another meaning is clearly intended:

*Administration Fee* shall mean the fee collected in addition to and at the same time as Impact Fees, to be used and distributed as appropriate for Impact Fee administration, for financial administration, and for costs related to the establishment, amendment and annual review/update of the Impact Fee ordinance and methodology.

*Applicant* shall mean the property owner, or duly designated agent of the property owner, of land on which a Building Permit, or water or wastewater connection, is requested and Impact Fees are due pursuant to this chapter, or shall mean the property owner, or duly designated agent of the property owner, of land identified in a credit agreement pursuant to Section 6.12(d) where such property owner or agent is responsible for the provision of System Improvement(s).

*Appropriation* shall mean funds identified in the CIP with the legal authority to expend such funds up to a certain dollar amount.

*Building Permit* shall mean the permit required for new construction, remodeling, redevelopment and additions pursuant to the Polson Development Code, as the same presently exist or may in future be amended. If no Building Permit is required for the construction or occupation of a structure then Building Permit shall be deemed to include any permit or other form of final city approval for the construction, change of use or occupancy of a structure, including but not limited to the conversion of hotel, motel or other lodging, with or without cooking facilities, to condominium or other residential use, and likewise, to include the authorization of connection of water or wastewater, or both, facilities to the structure or development. The term "Building Permit," as used in this chapter, shall be deemed to include a Mobile Home installation permit issued pursuant to the city building code or any equivalent permit or approval, and shall include occupational licenses.

*Capital Improvements Program (CIP)* shall mean the five-year schedule of capital improvements adopted by the city annually as part of the city budget process.

*Capital Improvement Projects* shall mean all projects for which funds are appropriated in the CIP. Capital improvement projects, including, but not limited to, capital equipment, land, facilities and site improvements, that are funded in whole or in part with Impact Fee funds must have a useful life of ten (10) years or more and increase or improve the service capacity of a public facility.

*City Commission* or *commission* shall mean the City Commission of Polson, Montana.

*City manager* shall mean that office vested with the executive power of the city from and after July 1, 2007.

*Collecting Agency* shall mean the city department or official authorized to issue Building Permits or to authorize or permit new Connections to existing water or wastewater facilities.

*Connection* Connection means either the connection by an individual lot or building in New Development to a public utility system, or the connection of a new main line serving New Development to existing city public utility or utilities.

*Demand Unit* shall mean the unit of public facility demand associated with various land uses and types of New Development as identified in the Development Impact Fees report and used to

calculate the impact fees listed for each type of New Development in the Impact Fee schedules in Section 2.06.870 herein.

*Dwelling Unit* shall mean a room or interconnected rooms, containing sleeping and sanitary facilities and one kitchen provided for the exclusive use of a single household. The term "Dwelling Unit," as used in this chapter, shall be deemed to include mobile home and manufactured home dwellings.

*Fire System Improvement* means System Improvements including improvements, land, and equipment with a useful life of ten (10) years or more that increase or improve the service capacity of the public Fire System utility, including but not limited to the city's fire and rescue system, including facilities, fire suppression vehicles and equipment, and emergency medical services vehicles and equipment.

*Governmental Uses* means New Development or System Improvements built specifically for use by the city of Polson or any agency, department, or division thereof, to include any such facility built or maintained pursuant to an Interlocal Agreement with any other unit of government.

*Gross Floor Area (gfa)* shall mean the total square footage of a building measured in feet from the exterior faces of exterior walls or other exterior boundaries of the building, excluding parking areas within the interior of the building. If a site contains multiple buildings, the gross floor area shall be computed separately for each building. The definition of Gross Floor Area in the ITE Trip Generation Manual shall be used to resolve any questions regarding calculation of gross floor area.

*Impact Fee* shall mean a monetary exaction imposed pursuant to the implementation processes outlined elsewhere in this Chapter and calculated based upon a New Development's proportionate share of the average cost of capital improvements needed to address the additional capital facility capacity and equipment needed to accommodate the demand for public facilities created by New Development. The term does not include a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development; a connection charge; any other fee authorized by law, including but not limited to user fees, special improvement district assessments, and the like; or onsite or offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the city.

*Impact Fee Advisory Committee*, hereinafter *Advisory Committee*, shall mean that Committee created hereunder to review and monitor the process of calculating, assessing, and spending impact fees.

*Impact Fee Review Board*, hereinafter *Review Board*, shall mean that Board created hereunder to hear and make recommendations for commission consideration in the situations further set forth herein.

*ITE Trip Generation Manual* shall mean the report entitled "Trip Generation" (Seventh Edition, 2003) of the Institute of Transportation Engineers, and any official updates thereto, as approved and accepted by the city.

*New Development* shall mean the carrying out of any building activity or the making of any material change in the use of a structure or land that requires the issuance of a Building Permit, as defined in this chapter, and which generates demand for capital facilities over and above the

previously existing documented use or development of the structure or land. New Development shall include changes in the use of a structure, for example and not by way of limitation the conversion of a structure from lodging (with or without cooking facilities) to residential use, whether or not physical changes are required to an existing structure. New Development excludes Governmental Uses as herein defined. New Development does not include remodeling, rehabilitation, or other improvements to an existing structure or for rebuilding a damaged structure unless there is an increase in demand units that increase service demand and, in such case, Impact Fees shall be imposed only on the net increase between the old and the new demand.

*Nonresidential Development* shall mean all New Development other than Residential Development and Governmental Uses as herein defined. Nonresidential Development includes, but is not limited to, industrial, manufacturing, warehousing, mini-warehousing, lodging (with or without cooking facilities), schools and daycare, hospital, nursing home, general office, medical-dental office, business park, and commercial uses, and includes those uses specified in the ITE Trip Generation Manual under Land Use Code Series 100, 300, 400, 500, 600, 700, 800, and 900.

*Other Residential Development* means Residential Development other than Single-Family Detached Residential Development and includes, but is not limited to, condominium development, multi-family development and townhouse/duplex development.

*Parks System Improvement* means land, capital improvements, capital facilities and capital equipment that add capacity to the city park system, including city-wide parks and associated improvements as well as open space and conservation land or easements and associated improvements, including trails and trail systems for non-motorized traffic, with a useful life of ten (10) years or more.

*Project Costs* shall mean amounts spent or authorized to be spent in connection with the acquisition, planning, legal, fiscal, economic, engineering, administrative services, financing, construction, equipping, development, and other costs associated with a public facility project.

*Residential Development* shall mean development of a structure or structures solely dedicated to the housing of a person or persons to live, cook and/or sleep within on a permanent basis, as either owner, renter or lessee provided, however, that adult congregate living facilities, retirement homes, nursing homes and other structures operated by a social service organization to provide residential care to children, the aged, the destitute and the physically, mentally and/or emotionally challenged shall be considered to be Nonresidential Development as defined herein.

*Service Charge* shall mean a charge that shall be collected in addition to the applicable Impact Fee amount for expenses associated with the establishment, amendment, periodic update and administration of the Impact Fee system and ordinance. The Service Charge shall be reviewed as part of the annual review provided for in Section 6.10 or at such other times as deemed necessary based upon information submitted by the city manager. The Service Charge is in addition to and shall be paid separately from the Impact Fee, but shall be payable at the time of Building Permit issuance, or authorized connection to water or sanitary sewer systems, and shall be for the purpose of defraying expenses of creating and maintaining the Impact Fee system, including but not limited to costs associated with consultants, administrative staff, equipment, software, and other expenses incurred in managing and maintaining the Impact Fee system.

*Single-Family Detached Residential Development* shall mean Residential Development consisting of a detached structure containing only one Dwelling Unit per structure and intended for occupancy by a single household.

*System Improvements* shall mean Capital Improvements, as defined in this chapter, that provide additional capacity and that serve multiple development projects, multiple neighborhoods or the entire city. System Improvements may include, but are not limited to, land, facilities, site improvements, furnishings, capital equipment, and vehicles. System Improvements shall not include property, capital facilities or capital equipment needed solely to serve a specific development. System Improvements shall not include replacement, rehabilitation, operations or maintenance of land, facilities or equipment.

*System Improvement Cost* shall mean amounts spent or appropriated in connection with the planning, financing, acquisition, construction and/or development of a System Improvement, including, without limitation, the costs of land acquisition and development, surveying, site testing, construction, design, engineering, construction management and inspection, permitting, legal services, financial services and administrative costs. Ancillary improvements directly related to a System Improvement, including but not limited to, parking, drainage improvements, landscaping, and capital equipment and furnishings shall be considered part of the cost of the System Improvement. System Improvement Costs shall not include costs related to operations, maintenance, rehabilitation or replacement of capital facilities or equipment.

*Technical Report* shall mean the report titled "Development Impact Fees: city of Polson, Montana" by TischlerBise, Fiscal, and Economic & Planning Consultants, dated February 5, 2007. The Technical Report is adopted by reference and is incorporated herein as if set forth in its entirety.

#### Sec. 2.06.850. Applicability.

A. From and after the Effective Date hereof, this chapter shall be uniformly applicable to all New Development as defined in this chapter, and the appropriate Impact Fee shall be collected prior to issuance of a Building Permit, as defined in this chapter, or the time of wastewater or water service Connection, except where a Building Permit is issued for additions, remodeling, rehabilitation or other improvements to an existing structure or reconstruction of a damaged or destroyed structure, whether voluntary or involuntary, which result in no net increase in the number of demand units, all as set forth herein. In such event impact fees shall be imposed only for the net increase between the old and new demand units.

B. Where this chapter becomes applicable due to: (i) additions, remodeling, rehabilitation or other improvements to an existing structure, (ii) reconstruction of a damaged or destroyed structure, whether voluntary or involuntary, (iii) a change in the use of a structure or land that increases the demand for public facilities, (iv) an increase in the number of demand units, the amount of the Impact Fees shall be based solely upon the net increase in the demand for public facilities based on a comparison of the Impact Fees calculated for the prior development/use to the Impact Fees calculated for the proposed development/use. The Applicant has the burden of submitting satisfactory documentation to the city proving the type and amount of previously existing use/development for use by the city in determining the net increase for calculation of Impact Fees due. No refund of Impact Fees previously paid shall be provided for any decrease in the amount or type of development.

C. Notwithstanding subsections A or B above, this chapter shall not be applicable to Building Permits issued by the city prior to 8:00 am on the Effective Date of this Ordinance, when the Applicant proceeds to issuance of Certificate of Occupancy without invalidation, suspension or abandonment of the corresponding Building Permit.

Sec. 2.06.860. Establishment of Impact Fee Districts.

In furtherance of the implementation of this chapter, the commission hereby establishes the following benefit districts for the identified Impact Fees:

- A. Park Impact Fee Benefit District which boundary is identical with the boundary of the city, as may be adjusted from time to time;
- B. Fire-Rescue Impact Fee Benefit District which boundary is identical with the boundary of the city, as may be adjusted from time to time; and
- C. Water System Impact Fee Benefit District which boundary is identical with the boundaries of land contiguous to the utility.
- D. Sanitary Sewer Impact Fee Benefit District which boundary is identical with the boundaries of land contiguous to the utility.

Sec. 2.06.870. Imposition of Impact Fees.

No Building Permit shall be issued, nor any water or wastewater Connection made, for New Development in any of the defined Districts unless the Applicant therefore has paid the applicable Impact Fees and applicable Service Fee and Service Charge, receiving any credit applicable thereto, at the time and in the manner imposed by this chapter or any other city Code provision. Any Building Permit issued for New Development without payment by the Applicant and collection by the city of the applicable Impact Fees and Service Charge if applicable, shall be null and void.

Sec. 2.06.880. Calculation of Impact Fee and Impact Fee Schedules.

- A. The city shall calculate the Impact Fees due under this chapter by:
  - 1. For each public facility for which an impact fee is imposed hereunder, the governmental entity has prepared and approved documentation, and shall update and verify the same as required, all pursuant to Section 7-6-1602 of the Montana Codes. The total Impact Fees due shall be the sum of the amounts calculated for each applicable Impact Fee in subsection (B) of this section.
  - 2. If the land use applicable to a development is not listed in the fee schedules in subsection (B) below, the fees for the most appropriate land use in the fee schedules, based on the characteristics of the proposed development as determined by the city manager, shall be imposed. If the Applicant believes that none of the land uses in the fee schedules are appropriate, the Applicant shall be responsible for timely filing a petition under Section 6.12 of this chapter. The land use characteristics and descriptions in the ITE Trip Generation Manual shall be used to determine the most appropriate land use. When multiple types of development are included in a building, the Impact Fees due shall be calculated for each type of development and included in the total Impact Fees due. When multiple buildings are included in a Building Permit application, the Impact Fees shall be calculated individually for each building and included in the total Impact Fees due.

3. Where a final petition determination has been made by a final decision issued by the commission after a timely appeal, the Impact Fees due shall be calculated based on such petition determination.

B. Applicable Impact Fee schedules as of the Effective Date hereof:

1. Park Impact Fee Schedule.

ITE Code/Land Use	Impact Fee per Demand Unit
<i>Residential Development (per dwelling unit)</i>	
Single Family Detached	\$1,020
All Other Housing Units	\$ 806

2. Water System Impact Fee Schedule.

ITE Code/Land Use	Impact Fee per Demand Unit
<i>Residential Development (per dwelling unit)</i>	
Single Family Detached	\$3,310
All Other Housing Types	\$2,617
<i>Nonresidential Development (per meter/size in inches)</i>	
0.75	\$3,313
1.00	\$5,633
1.50	\$10,935
2.00	\$17,563
Fees for meters larger than two inches will be based on an annualized day demand and the net capital cost per gallon of capacity.	

3. Sanitary Sewer Impact Fee Schedule

ITE Code/Land Use	Impact Fee per Demand Unit
<i>Residential Development (per dwelling unit)</i>	
Single Family Detached	\$1,531
All Other Housing Types	\$1,210
<i>Nonresidential Development (per water meter/meter size in inches)</i>	
0.75	\$1,533
1.00	\$2,607
1.50	\$5,061
2.00	\$8,129
Nonresidential sewer fees are based on water meter size. Fees for meters larger than two inches will be based on annualized average day demand and net capital costs per gallon of capacity.	

4. Fire Impact Fee Schedule

ITE Code/Land Use	Impact Fee per Demand Unit
<i>Residential Development (per dwelling unit)</i>	
Single Family Detached	\$971
All Other Housing Types	\$768
<i>Nonresidential Development (per gross square foot)</i>	
820 Commercial/Shop. Ctr 50,000sf or less	\$1.69
820 Commercial/Shop. Ctr 50,001 – 100,000sf	\$1.41
820 Commercial/Shop. Ctr 100,001 – 200,000 sf	\$1.20
710 General office 25,000sf or less	\$0.57
710 General office 25,001 – 50,000sf	\$0.49
710 General office 50,001 – 200,000sf	\$0.35
720 Medical-Dental Office	\$1.13
140 Manufacturing	\$0.12
770 Business Park	\$0.26
110 Light Industrial	\$0.21
150 Warehousing	\$0.15
610 Hospital/Clinic	\$0.55
151 Mini-Warehouse	\$0.07
<i>Other Nonresidential Development (as indicated)</i>	
320 Lodging (per room)	\$177
520 Elementary School (per student)	\$26
530 Secondary School (per student)	\$38
565 Day Care (per student)	\$67
620 Nursing Home (per bed)	\$74

C. The foregoing tables show the maximum assessable Impact Fees. The commission reserves the right to adjust by separate resolution from time to time the actual percentage to be imposed.

Sec. 2.06.881. Administration and Collection of Impact Fees.

A. *Collection of Impact Fee.* Impact Fees calculated and imposed pursuant to this chapter shall be collected by the Building Department or office of the city prior to issuance of a Building Permit or of a Connection.

B. *Implementation.* Impact Fees are assessable and payable at the following times:

1. *Service Connection to Individual Lots.* Impact Fees shall be assessed and payable at the time of Connection of a service line, or any, to any existing lot or parcel. All requests for Connection to utility services shall be routed through the Building Department for this purpose.

2. *Issuance of Building Permit.* Impact Fees shall be assessed and payable prior to the issuance of a Building Permit for any existing lot or parcel. In the case of lots falling within the ambit of subpart 4 hereof, any credit therefor shall be included in the calculation of the Impact Fee due and payable.

3. *New Development for which Water or Sanitary Sewer Extensions are required.* Impact Fees for any New Development, to include any major or minor subdivision, and including such cases as will require annexation within the

corporate boundaries of the city of Polson, where such New Development will require the extension of water or sanitary sewer mains rather than service connections from existing mains, are due and payable as set forth hereunder:

(i) The total Impact Fees assessable to the New Development, taking into account and including such Impact Fees as are assessable to each individual lot thereof, shall be calculated. In cases where the structure ultimately to eventuate on a commercial lot is unknown, the calculation shall be based upon the fees assessable against a Commercial/Shop Ctr 50,001-100,000 SF. Prior to the time of final plat approval, of either the whole of the New Development, or of a phase thereof, as the same is contemplated in Montana law, the Applicant shall pay fifty percent (50%) of the total calculated Impact Fees assessable to such New Development for which final plat approval is sought. In the case of the Parks Impact Fee, such fee will be netted against the parks in lieu payment assessable under Montana law, as presently exists or as amended in future, and the Applicant shall pay the difference thereof.

(ii) Where an individual described lot or parcel has already been assessed at least fifty percent (50%) of the Impact Fee assessable thereto pursuant to subpart B.3.(i), above, then and in that event, such lot or parcel shall receive a partial credit therefor, consisting of not more than fifty percent (50%) of the Impact Fee otherwise assessable against such Applicant, at such time the Impact Fee otherwise assessable thereto should be paid pursuant to Section B.1. or B.2. hereof, and subject to the requirement that not more than ten (10) years have passed since Impact Fee payment was made under subsection B.3.(i) hereof. Where more than ten (10) years have passed since approval of the preliminary plat where the New Development will be located, the individual lot or parcel shall, prior to the issuance of a Building Permit or of a Connection, be assessed and pay all Impact Fees then due and payable, without credit for prior partial payment.

4. *Transition Provision.* Any subdivision that had received preliminary, but not final, plat approval as of April 17, 2007, is bound by the terms of such preliminary approval. If under such terms the developer paid then-existing capital improvement or connection fees and costs codified at Resolution 627, the same shall be netted on a per-lot basis against the full water and sewer impact fees otherwise applicable under this Chapter. If the preliminary plat conditions included the payment of future impact fee, then no netting of former Resolution 627 fees shall apply.

C. *Administration Fee.* An Administration Fee of five (5) percent of the total Impact Fee assessment shall be collected at the same time as the Impact Fee. The Administration Fee shall be collected from each Applicant and shall be distributed as appropriate for Impact Fee administration, for financial administration, and for costs related to the establishment, amendment and annual review/update of the Impact Fee ordinance and methodology. The Administration Fee is not a part of the Service Charge in Section 2.06.882 hereof and is not refundable.

D. *Accounting and Reporting of Impact Fee Collections and Expenditures.* Impact Fees shall be transferred from the Collecting Agency to the Finance Officer which shall be

responsible for placement of such funds into the appropriate separate accounts by type of Impact Fee and applicable benefit district. The Service Charge shall be placed in a separate account identified for management of the Impact Fee system and disbursed as set forth in this chapter. The Finance Officer shall maintain and keep adequate financial records for each such account which shall show the source and disbursement of all revenues, which shall account for all moneys received, including revenue by Building Permit, and which shall document and ensure that the disbursement of funds from each account shall be used solely and exclusively in accordance with provisions of this chapter. For purposes of petitions for refunds under Sec. 2.06.883 of this chapter, the expenditure and appropriation of Impact Fees shall be deemed to occur in the same sequential order as the collection of Impact Fees, in other words, the first fee in shall be the first fee out.

E. *Propriety funds established.*

1. There is hereby established a separate Impact Fee propriety fund account for each of the following Impact Fees: parks, water system, fire-rescue, service fee, service charge, and sanitary sewer. Funds withdrawn from these accounts must be used solely in accordance with the provisions of subsection (d) of this section. The disbursal of such funds shall be in accordance with the Capital Improvement Program of the city.

2. Any funds on deposit not immediately necessary for expenditure shall be invested in interest-bearing accounts. Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds of such account. The funds of these accounts shall not be commingled with other funds or revenues of the city.

F. *Use of funds collected.* Impact fees collected pursuant to this chapter shall be expended only for the type of System Improvements for which the Impact Fee was imposed and only within the Impact Fee benefit district where the Impact Fee was collected. Impact fees shall be expended only on System Improvements needed to accommodate the demand generated by New Development. Impact fees shall not be expended to eliminate any deficiencies in facilities, land or equipment related to existing development or that may result from adoption of an increased level of service. The funds collected by reason of this chapter shall be used exclusively for the purpose of undertaking System Improvements or for financing directly, or as a pledge against bonds, revenue certificates and other obligations of indebtedness, the costs of System Improvements.

G. *Annual review and modification:* Beginning with adoption of the Fiscal Year 2013-2014 Budget, the city shall annually review these Impact Fee ordinance procedures, assumptions, formulas, benefit district designations, and fee calculations, and issue an annual report. The annual report shall be distributed to the commission by the city manager. The annual report should, at a minimum, include information by individual benefit district and facility type on account balances, annual collections, annual expenditures, and System Improvement projects funded in whole or in part with Impact Fees. The annual report should present any recommendations related to the Impact Fee system, including but not limited to, the need for any updates to the Impact Fee calculations, district boundaries, and ordinance. In reviewing the Impact Fee system, the city may consider: development occurring in the prior year, construction of proposed public facilities, changing facility needs, inflation and other economic factors, revised cost estimates for public facilities, land and/or improvements, changes in the availability of other funding sources applicable to impact-fee-related capital improvements, and any

other factors as may be relevant. The data in the annual report may be organized based on the city's fiscal year or calendar year. The annual report shall review the amount of service charges collected and the costs associated with the creation, administration, management and updating of the Impact Fee system and shall provide recommendations on any changes to the amount of the service charge. The annual report shall specifically analyze the need to incorporate new local data compiled in accordance with Section 7-6-1602 of the Montana Codes. Nothing in this chapter shall be construed to limit the commission's authority to amend this chapter at any time.

H. *Annual review and modification:* The city shall conduct a complete review of this ordinance each year with the purpose to determine if changes in costs, facility needs, development patterns, demographics, and any other relevant factors indicate a need to update the Impact Fee calculations, data, methodology or other predicate assumptions or basis of the components contributing to the factors comprising the underlying rationale of this Chapter. The annual report issued based on this review shall be distributed to the commission by the city manager. The city shall endeavor to adopt any changes and updates to this Chapter, including updated fee calculations, within a year of completion of such annual report.

#### Sec. 2.06.882. Service Charge.

A Service Charge in connection with the collection of Impact Fees is hereby established. The Service Charge may also be used to defray expenses related to petitions, appeals and/or legal challenges to this Chapter. The Service Charge shall be reviewed in connection with Section 2.06.881 and shall be set by administrative finding of the city manager and be based upon a review of incurred and anticipated costs to create, administer, update and manage this Chapter and shall not exceed actual costs to the city. The Service Charge is nonrefundable.

#### Sec. 2.06.883. Administrative Process for Impact Fee Re-determinations, refunds, credits and reimbursements.

##### A. *Petition process.*

1. Petitions for an Impact Fee Re-determination (IFR), refund of Impact Fees, credits against Impact Fees and/or reimbursements of Impact Fees in view of System Improvements, as each are further outlined below, shall be submitted by written petition under the requirements and time limits provided herein. All petition requests, except petitions for refunds under subsection (c) below, shall be accompanied by such fee as may be established from time to time by the city manager.

2. Sole authority to finally decide petitions for Impact Fee Re-determinations, refund, credits, or reimbursements shall reside with the city commission, which shall receive and consider the advice of the Review Board. The commission shall have full power to affirm, reverse, or modify the action of the Review Board so long as such commission action is based on applicable law and the provisions of this chapter. The decision of the commission shall be reduced to writing and signed by the city manager.

3. Authority is hereby granted to the office of the city manager to form an Impact Fee Review Board, the Board to be constituted as and when necessary to address requests for redetermination, credits, reimbursements, or refunds of

impact fees paid, and shall be, when so constituted, empowered to hear all petitions for Impact Fee Redeterminations, refunds, credits, or any other appeals of city staff findings as the same might otherwise appear in this Chapter or result from the administration thereof. Each Board, when implemented, shall consist of at least two sitting city commissioners, the city manager or his designee, Building Inspector, and Planning director, or any other staff or persons the city manager or his designee deems appropriate.

(i) The Board may adopt any formal or informal internal organization and operating rules it finds adequate to address its responsibilities as outlined herein. All petitions for IFR, refund, or credit shall be submitted to the Review Board for its consideration and advisory opinion. It is within the Board's discretion to decide whether the Petition it has received is complete; if not, the Board is charged to timely apprise the Petitioner of any additional necessary data.

(ii) The Board shall meet from time to time as the city manager deems necessary to timely determine its advisory opinion, but in any event such petition must be presented, together with the Board's advisory opinion, to the commission for a final determination within sixty (60) days of the filing of a complete petition. In its advice the Board must consider the applicable terms of this Chapter, together with such facts and circumstances, in law as well as equity, together with any applicable staff advice or recommendations, as the Board may deem within the intent of this Chapter.

(iii) The Board need not conduct any public hearing; but if the Board determines a hearing necessary to a full determination of the matter, it shall follow that format for hearing, not including statutory notice, outlined elsewhere in this Code applicable to the Planning Board.

(iv) The Board must, in reviewing any petition lodged pursuant to this Chapter, guide its inquiry pursuant to the provisions of this Chapter and applicable Montana law, paying particular attention to sections 2.06.820.A and 2.06.850.A hereof, namely, that assessable Impact Fees must be logically linked to actual Demand Units. It shall issue a final summary written finding on the Petition, which shall include the Board's findings, reasoning, and advice, for consideration by the city commission.

4. Upon written agreement by the city manager and the petitioner, the time limits in this section may be waived for any reason, including, but not limited to, the submittal of additional data and supporting statements by the petitioner.

5. Except as otherwise provided in this subsection, the filing of a petition shall stay action by the city on the application for Building Permit and any other city action related to the development. No Building Permit or other city action shall be issued for development for which a petition has been filed unless the total Impact Fees due, as determined by the city and including any applicable Service Fee and Service Charge, have been paid in full or a sufficient bond or letter of credit satisfactory to the city Attorney has been filed with the city.

B. *Petition for Impact Fee Re-determination.* (IFR) Any Applicant prior to or in conjunction with the submission of an application for a Building Permit, if applicable, or within thirty (30) days of the date of payment of Impact Fees, may petition the Review

Board for a determination that: i) the amount of the Impact Fees imposed on the New Development is inappropriate based on the specific land use category applied to the residential or Nonresidential Development and/or based on the amount of development (dwelling units and/or gross square footage) used to calculate the Impact Fees, ii) the amount of Impact Fees otherwise applicable in Applicant's circumstances should be mitigated on the basis that the Demand Units upon which such calculation is based differs for Applicant's particular proposed New Development; or iii) the Impact Fees are otherwise unlawfully imposed. The petition shall specify in detail the basis on which the Applicant asserts that the amount of the Impact Fees is inappropriate or unlawful. The petition shall be on a form provided by the city and shall, at a minimum, include: identification of the disputed factor(s), a detailed statement asserting the basis for the dispute, the data relied upon by the petitioner, a detailed statement by a qualified professional engineer, planner or other appropriate professional, and, if filed after payment of Impact Fees, a dated receipt for payment of the Impact Fees issued by the city's building department. No Petition shall be deemed complete unless the filing fee therefore has been paid. Failure to timely file a petition for Impact Fee determination shall waive any right to challenge, review or recalculate the Impact Fee payment.

C. *Petition for refund of Impact Fees.*

1. The current owner of property on which an Impact Fee has been paid may apply for a refund of such fee if: i) the city has failed to appropriate or spend the collected fees by the end of the calendar quarter immediately following eight years after the date of payment of the Impact Fee; or ii) the project for which a Building Permit has been issued has been altered resulting in a decrease in the amount of the Impact Fee due.

2. Only the current owner of property may petition for a refund. A petition for refund must be filed within ninety (90) days of any of the above-specified events giving rise to the right to claim a refund. Failure to timely file a petition for refund shall forever waive any right to an Impact Fee refund.

3. The petition for refund shall be submitted to the Review Board on a form provided by the city for such purpose. The petition shall contain a notarized affidavit that petitioner is the current owner of the property; a certified copy of latest tax records for the City of Polson showing the owner of the subject property; a copy of a dated receipt for payment of the Impact Fee on the subject property issued by the city's building department; and a statement of the basis upon which the refund is sought. In the case of any uncertainty regarding the petitioner's right to the refund, the petitioner shall be responsible for providing adequate documentation supporting petitioner's legal rights and agreeing to indemnify and defend the city against any other claims to the refund.

4. Any money refunded pursuant to this subsection shall be returned with interest not to exceed the interest earned on the money while in the care and custody of the city, and in any case not to exceed two percent per annum.

D. *Petition for credits or reimbursements against Impact Fees.*

1. The city may accept the dedication of land or the construction of a System Improvement as a credit against Impact Fees, or in the alternative may reimburse some share of the cost of an installed System Improvement. In either case the need for the dedication or construction must be clearly documented pursuant to Section 7-6-1602 of the Montana Codes. If the same be a dedication of land, the

same must be appropriate for proposed use, as determined pursuant to the petition process, and the petition must be accompanied by a professional, signed appraisal. No credits will be granted for on- or off-site acquisitions or improvements necessary and in mitigation of New Development, which shall in the usual case be such acquisitions or improvements recommended by the Planning Board. The formula for determining any credit applicable hereunder shall consist in the actual value of land dedicated or the cost of plant constructed.

(i) To receive a credit, the Applicant must, prior to the Applicant's construction or dedication of the System Improvement, submit a petition on a form provided by the city, obtain a determination of credit eligibility and the amount of any credit, and enter into a credit agreement with the city. The petition for credit shall contain, at a minimum, the following: a certified copy of the most recently recorded deed for the subject property, preliminary engineering plans and certified costs estimates by an architect, engineer or other appropriate professional for the proposed improvement, legal description of any land proposed to be contributed together with a signed appraisal thereof, proposed schedule for completion of any construction/dedications, identification of the proposed improvement in the current adopted city CIP and the amount of Impact Fee funding for the improvement, and identification in detail, if known, of the development against which the credits are to apply or which will pay the Impact Fees to be used for the credit, including the land use type(s), number of units/gross floor area, anticipated development schedule, and legal descriptions of the subject property. Any appeal of petition determinations on credits must be filed with the Review Board pursuant to this section and a final determination made by the city commission prior to the Applicant's construction, dedication or escrow for which the credit is requested. Failure to timely file a petition for Impact Fee credits shall waive any right to Impact Fee credits.

(ii) No petition for impact fee reimbursement agreement shall be available if more than ten (10) years have passed since the System Improvement or dedication of land forming the basis of the petition. The petition for reimbursement shall contain, at a minimum, the following: a certified copy of the most recently recorded deed for the subject property, if dedication of land is the basis for the reimbursement. If the basis is an installed System Improvement, Applicant must submit as-built engineering plans, and either receipts for installed costs or certified costs estimates by an architect, engineer or other appropriate professional for the System Improvement, a legal description of any easement or land proposed to be contributed together with a signed appraisal thereof, proof, consisting of inspection notes or the like, of acceptability of said System Improvement by any necessary regulatory entity, a map or drawing defining the geographical area served by the System Improvement, if any, and identification in detail, if known, of the development against which the reimbursements are to apply or which will pay the Impact Fees to be used for the reimbursement. No installed System Improvement can operate as a basis for reimbursements if the same cannot meet all necessary regulatory criteria that may apply, if it said System Improvement will not be or has not been dedicated to the city's exclusive ownership, or if the said System

Improvement was installed for and has capacity only to serve an Applicant project. Any appeal of petition determinations for reimbursements must be filed with the Review Board pursuant to this section and a final determination made by the city commission. Failure to timely file a petition for Impact Fee reimbursements shall waive any right to Impact Fee reimbursements.

2. Whether the need for the System Improvement is clearly documented in accordance with Section 7-6-1602 of the Montana Codes and/or this Chapter, and the appropriate amount of the credit, or of a reimbursement, shall be initially determined by the Review Board subject to the final determination of the city commission. The amount of the credit or reimbursement shall be based on actual costs certified by a professional engineer or architect submitted by the Applicant and reviewed and approved by the appropriate city department, or in the case of land, the appraised value thereof. In no event shall the credit or reimbursement exceed the amount of Impact Fees budgeted for that System Improvement or the amount of the Impact Fees for the same type of System Improvements that are due from the development requesting the credit, whichever amount is smaller. If the Impact Fees due exceed the amount of credit, or reimbursement, the Applicant shall pay the Impact Fees due less the credit or reimbursement at the time of issuance of the Building Permit, Connection, or subdivision Final Plat.

3. If a credit or reimbursement petition is approved, the Applicant and the city shall enter into a agreement which shall provide for, but is not limited to, the following: the process to be used to verify actual costs, the value of any dedicated land or methodology to determine the value of any dedicated land, the obligations and responsibilities of the Applicant, including but not limited to i) public bidding requirements, if applicable, ii) engineering, design and construction standards and requirements to be complied with, iii) insurance and indemnification requirements, and iv) project inspection standards and responsibilities, v) timing of the actions to be taken by the Applicant, vi) transfer of title to land and improvements, vii) process for submittal of credit or reimbursement payment requests, and viii) timing of payments by the city. No Impact Fee credits, or reimbursements, shall be honored or paid until any land has been dedicated and conveyed to the city and/or the facilities have been constructed and accepted, or alternatively, until a bond has been posted to ensure the conveyance and/or construction. In the case of reimbursements, reimbursements will be paid only from any future impact fee collections arising in the area served by the System Improvement for which reimbursement is sought, and only from the impact fee collections relating to the System Improvement. The city's obligation to honor Impact Fee credits shall expire after ten (10) years from the date the credit is granted. Reimbursement payments shall be limited to the Impact Fees collected from the development for a period not to exceed fifteen (15) years from the date of approval of the agreement if the agreement provides that the Impact Fees owing to such New Development are to be paid on a per-lot, not main-connection, basis. It is the obligation of the Applicant to provide recorded notice to subsequent purchasers/owners of the property regarding the credit, if any, that may be available to such purchasers and shall agree to indemnify the city for any and all costs and liabilities arising from any claims by others related to the Impact Fee credit. In the case of a reimbursement agreement, it shall be the obligation of the city to identify impact fees arising from the System Improvement service area, and of the Applicant to make quarterly request therefor.

Sec. 2.06.884. Judicial Review.

Any request for review of a decision by the commission under this chapter shall be made by filing an appeal within 30 days of execution of the commission's written determination by the city manager with the Lake County district court in accordance with the legal rules applicable in such instance.

Sec. 2.06.885. Effect of the Impact Fee on zoning and subdivision regulations.

This chapter shall not affect, in any manner, the permissible use of the property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of public improvements subject to the land development regulations or other regulations of the city or applicable therein, which shall be operative and remain in full force and effect without limitation with respect to all such development.

Sec. 2.06.886. Impact Fee as additional or supplemental requirement.

The payment of Impact Fees imposed pursuant to this chapter is additional and supplemental to, and not in substitution of, any other regulations and requirements imposed by the State of Montana, Lake County, or the city on the development of land or the issuance of Building Permits. In no event shall a property owner be required to pay for System Improvements related to providing new capacity for New Development in an amount in excess of the amount calculated pursuant to this chapter; provided, however, that a property owner may be required to provide or pay, pursuant to ordinances, policies or regulations of the city, County or the State of Montana, for public facility improvements in addition to payment of Impact Fees pursuant to this chapter. Nothing in this chapter shall be construed as a guarantee of adequate public facilities at the time of development of any particular property.

Sec. 2.06.887. Unitary and Special utility connection fees.

A. Water. Both the unitary and special water connection fees shall be paid prior to installation of any tap, meter, or other hookup. Private water connection users are subject to all provisions of the Polson Municipal Code related to such connection.

1. Unitary connection fee. The city shall assess and charge to any Applicant for private water connection a fee for such connection, to be known as the unitary water connection fee, to be calculated in August of each and every year and that year's calculation to be in effect until August 1 of the following year, as follows: the sum of the Water Department and Facility Administration budget expenditures, divided by the number of then-existing water connections throughout the city water system. The figure to be used for the Water Department budget expenditures shall not include any projected annual budget capital expenditures in excess of \$5,000.00.

2. Special. The Water Department shall publish a schedule of special water connection fees which shall set forth the usual costs and expenses incidental to such installation as a special water connection fees applicable to individual types of connections.

B. Sewer. Both the unitary and special sewer connection fees shall be paid prior to installation of any tap, meter, or other hookup. Private sewer connection users are subject to all provisions of this Code related to such connection.

1. Unitary connection fee. The city shall assess and charge to any Applicant for private sewer connection a fee for such connection, to be known as the unitary sewer connection fee, to be calculated in August of each and every year and that year's calculation to be in effect until August 1 of the following year, as follows: the sum of the Sewer Department and Facility Administration budget expenditures, divided by the number of then-existing sewer connections throughout the city sewer system. The figure to be used for the Sewer Department budget expenditures shall not include any projected annual budget capital expenditures in excess of \$5,000.00.

2. Special. The Sewer Department shall publish a schedule of special sewer connection fees which shall set forth the usual costs and expenses incidental to such installation as a special sewer connection fees applicable to individual types of connections.

Sec. 2.06.888. Alternative collection method.

In the event that the appropriate amount of Impact Fees due pursuant to this chapter are not paid prior to the issuance of a Building Permit, the city may elect to collect the Impact Fees due by any other method which is authorized by law.

Sec. 2.06.889. Liberal construction.

The provisions of this chapter shall be liberally construed to effectively carry out its purposes in the interest of public health, safety, welfare and convenience.

Sec. 2.06.890. Severability.

Should any sentence, clause, article or provision of this chapter be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this chapter as a whole, or any part thereof other than the part declared to be invalid.

Sec 2.06.891. Impact Fee Advisory Committee.

An Impact Fee Advisory Committee shall be established pursuant to 7-6-1604 MCA. The Impact Fee Advisory Committee, hereafter Advisory Committee, shall review and monitor the process of calculating, assessing, and spending impact fees. The Advisory Committee will consist of five members with at least one member from the development community and one certified public accountant. The Advisory Committee will serve in an advisory capacity to the city commission.

Secs. 2.06.892-2.06.899. Reserved.

## **DIVISION 9. INSUFFICIENT FUNDS CHECKS**

Sec. 2.06.900. Policy of city.

Sec. 2.06.910. Definition.

Sec. 2.06.920. Fee for insufficient fund check.

Secs. 2.06.930- 2.06.999. Reserved.

Sec. 2.06.900. Policy of city.

It is the policy of the city that persons who issue to any city department an insufficient funds check shall be charged, in addition to the face value thereof, an additional amount to offset the costs of presentation and collection of such check.

Sec. 2.06.910. Definition.

An insufficient funds check shall be any bank draft issued to the city which has been twice presented to the issuing bank and twice rejected thereby for the reason that such account is closed, or contains funds insufficient to negotiate such check.

Sec. 2.06.920. Fee for insufficient fund check.

In the event that an insufficient fund check is returned unpaid as stated in Sec 2.06.910, then and in that event the city shall charge the issuer an additional fee of twenty five dollars (\$25.00) or such amount as may hereinafter be adopted by resolution in the Schedule of Fees of the city of Polson. In addition, the city is authorized to pursue on its behalf any civil or criminal remedies available in Montana law.

Secs. 2.06.930- 2.06.999. Reserved.