



Chapter One

Purpose, Authority & General Provisions

What This Chapter Does

This chapter states the purpose of these regulations and identifies the statutes pursuant to which they are adopted; describes the transition from previous regulations; and establishes rules for their interpretation.

DRAFT CHAPTER I – PURPOSE, AUTHORITY, AND GENERAL PROVISIONS

- A. What This Chapter Does.** This chapter states the purpose of these regulations, identifies the statutes pursuant to which they are adopted, repeals conflicting previous regulations, establishes vested rights for developments approved prior to adoption of these regulations, ~~establishes rules for the continuation of existing uses and buildings that do not conform to the requirements of these regulations~~ (moved to zoning procedures), and establishes rules for the interpretation of these regulations.

Division 1 – Purpose, ~~and~~ Authority, Applicability and Compliance

- B. Purpose.** The purpose of these regulations is to promote the health, safety, and general welfare of the people of the City of Polson (the city) and surrounding jurisdictional area (the county) by implementing the regulatory strategies applicable goals, objectives and policies of the Polson ~~Master Plan Growth Policy~~ and the Lake County Growth Policy. Specific statements of purpose accompany certain provisions of these regulations, but their policy basis is found in the ~~master plan growth policies~~. Additionally, in accordance with 76-2-201, 76-2-301, and 76-3-501, MCA, these regulations are intended to:

1. Secure safety from fire and other dangers;
2. Promote public health, safety and general welfare;
3. Provide adequate light, air, water, sewerage, schools, parks, and other public requirements;
4. Lessen congestion on streets and highways and provide effective motorized and non-motorized transportation systems;
5. Promote compatible urban growth, including the character of each district and its peculiar suitability for particular uses;
6. Conserve the value of buildings and encourage the most appropriate use of the land;
7. Prevent overcrowding of the land;
8. Require development in harmony with the natural environment, and promote the preservation of open space and cluster development;
9. Protect the rights of property owners; and
10. Require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

- C. Authority.** These regulations are adopted under the authority granted by 76-2-201, MCA, et seq., which authorizes county zoning; 76-2-301, MCA, et seq., which authorized city zoning; and 76-3-501, MCA, which requires cities and counties to adopt subdivision regulations.

D. Applicability. These regulations apply to all development, public or private, within the city and surrounding jurisdictional area unless otherwise expressly stated. Where development is exempt from these regulations, these regulations shall be used as non-binding guidelines.

E. Compliance Required. No land shall hereafter be divided, used or occupied, and no building, structure or part thereof shall hereafter be erected, constructed, reconstructed or structurally altered, and no development shall commence unless it is in conformity with these regulations.

Division 2 – Transition from Previous Regulations

F. Conflicting Ordinances And Resolutions. All prior ordinances are repealed to the full extent of their inconsistency with these regulations, including the 1986 Development Plan Zoning Ordinance and Subdivision Regulations. The 1993 Polson Development Code is repealed and replaced with this 2011 Polson Development Code. If the provisions of these regulations are inconsistent with those of the state or federal government, the more restrictive shall control. If the provisions of these regulations are inconsistent with one another, or if they conflict with the provisions of other ordinances or regulations of the city or county, the more restrictive shall control unless otherwise expressly stated. Headings, tables and illustrations are provided for convenience and reference only. In the case of any difference of meaning or implication between the text of this code and any heading, table or drawing, the text controls.

G. Vested Rights. A vested right is the right to proceed with development in compliance with the previous regulations (which are repealed by I.D.F.), or the right to proceed in compliance with these regulations, pursuant to a development agreement, as provided in XIX.D., et seq Chapter V.

1. A vested right to proceed with development initiated prior to the effective date of these regulations shall be established only by:
 - a. Having obtained a permit in compliance with the previous regulations (such vested rights expire with the permit) ~~or, where construction has not been diligently pursued, two years after the effective date of these regulations);~~ or
 - b. For subdivisions in the preliminary plat application and review phase, when the subdivision administrator issues notice that the preliminary plat application is sufficient for review (76-3-604, MCA); or
 - c. Having recorded a final plat or obtained final approval of a preliminary plat in compliance with the previous regulations. Recording a final plat establishes a vested right to develop and sell lots precisely as they are described on that plat. Prior approval of a preliminary plat establishes a vested right to proceed with final platting and development of the subdivision ~~precisely as approved. Such vested rights expire with the preliminary plat approval or, if a final plat is not recorded, two years after the effective date of these regulations.~~ Development or subsequent division of the lots shown on a final plat must comply with these regulations.
2. Vested rights to proceed with development in compliance with these regulations (which may, of course, be amended) shall be established only by obtaining a permit or by obtaining a notice of preliminary plat application sufficiency. Such vested rights expire with the permit, the

subdivision approval period or, where one is approved, the development agreement. Vested rights are established for a development ~~precisely~~ as it was approved. Any material change must be in compliance with the then current regulations.

~~H. Nonconforming Uses and Buildings~~ (moved to Chapter III, Zoning Administration)

H. Private Agreements. Adoption of these regulations does not nullify easements, covenants, and similar private agreements, but where any such agreement imposes requirements less restrictive than those adopted here, the requirements of these regulations apply. Where the provisions of any private agreements are more restrictive or impose higher standards than these regulations, the city and county have no duty to enforce such restrictions or advise of their existence. The city and county may enforce private restrictions if they are a party to such restrictions, if such restrictions were required by or relied upon by the city or county during the land permitting and development process in order to meet the requirements of these regulations.

Division 3 – Interpretation

I. Meaning and Intent. The language of the Polson Development Code must be read literally. These regulations are no more or less strict than stated. Words and terms expressly defined in these regulations have specific meanings assigned, unless the context expressly indicates another meaning.

J. Responsibility for Interpretation. In the event that a question arises concerning any provision or the application of any provision of these regulations, the Polson Building and Planning Official or the Lake County Planning Director, acting as the zoning and subdivision administrator (the administrator) and in consultation with the municipal or county attorney’s office as may be necessary, shall be responsible for such interpretation and shall look to the appropriate growth policy and the overall intent of these regulations and the policy statements of specific chapters for guidance. The administrator shall provide such interpretations in writing upon request and keep a permanent record of said interpretations. The responsibility for interpretation shall not be construed as overriding the responsibilities given to any commission, board, or official named in other parts of these regulations. Any person who disputes the administrator’s interpretation of text may appeal to the city or county board of adjustment (BOA) for zoning matters (Chapter III.Q.) and the appropriate governing body for subdivision matters (Chapter VI.).

K. Delegation of Authority. When a provision in these regulations requires a department supervisor to perform some act or duty, it shall be construed to authorize that individual to designate, delegate and authorize professional level subordinates to perform the required act or duty, performed under the supervisor’s supervision, unless the terms of the provision or section specify otherwise.

~~**L. Most Restrictive Standards.** If future regulations adopted by the county or city, or state or federal law, impose additional requirements on activities governed by these regulations, the most restrictive apply. Note: This is covered under Conflicting Ordinance and Laws, F., above.~~

L. Burden of Proof. The responsibility for demonstrating compliance with these regulations is the developer’s. No incomplete application for a permit shall be accepted, and “insufficient information to determine compliance” shall be proper grounds for the rejection of an application by the administrator, ~~or~~ board, city commission or board of county commissioners (CC or BOCC).

M. Requirements Minimum. All requirements of these regulations shall be interpreted as the minimum necessary to protect the public health, safety, and general welfare, and implement the ~~plan~~ Polson and Lake County Growth Policies. This ordinance is designed for consistency with the ~~plan~~ growth policies and should be interpreted to achieve ~~its~~ their goals, objectives, policies and strategies.

N. Computation of Time. When a time period is specified in these regulations, the first day shall be the day after the event that triggers the time clock to start. For example, if an action is to be taken within 35 working days of the date an application is deemed to be sufficient for review, the time clock starts on the first business day after the date the application is deemed sufficient.

O. Severability. If any requirement of these regulations, or their application to particular circumstances, is held to be invalid by a court of competent jurisdiction, the remaining requirements and application of these regulations to other circumstances shall be unaffected.

P. Effective Date. These regulations shall become effective immediately upon their adoption.