POLSON CITY COMMISSION SPECIAL MEETING MINUTES
CITY HALL – CITY COMMISSION CHAMBERS
WEDNESDAY, MAY 16, 2012, 7:00 P.M.

ATTENDANCE: City Commissioners: Todd Erickson, John Campbell, Stephen Turner, Mike Lies, Dan Morrison, Fred Funke and Mayor Pat DeVries presiding. City Attorney James Raymond, City Manager Todd Crossett, City Clerk Cindy Dooley, Water & Sewer Superintendent Tony Porrazzo, and Park Superintendent Karen Sargeant present. Others present (that signed in) Ben Griffing, Ken Siler, Paul London, Dennis Duty, Judy Preston, Margie Hendricks, and Elsa Duford.

Mayor Pat DeVries called the meeting to order. The pledge of allegiance was recited.

APPROVAL OF PROPOSED AGENDA: Commissioner Lies made a motion to approve the agenda, seconded by Commissioner Funke. Commission discussion: None. Public discussion: None. M**otion carried unanimously**.

WORKSHOP DISCUSSION ON PROPOSED ORDINANCE NO. 661 AND PROPOSED RESOLUTION NO. 1027: Mayor DeVries reminded all in attendance that it was agreed that the meeting would finish by 8:30 pm. She yielded the floor to City Manager Crossett to conduct the workshop discussion. The format for the meeting was split between those wanting to go through the Ordinance page-by-page and those wanting to discuss major topics of concern. City Manager Crossett decided to start with the major issues. **First discussion point from Mayor DeVries is to change the word "revised" to the word "repealed" where Ordinance 624 is referenced.** There was also some confusion about reference to resolution 624 that Mayor DeVries thought should say ordinance 624. City Attorney Raymond commented that there is reference to a resolution 627 that deals with the old water and sewer hookup fees and capital improvement fees but he is not aware of a reference to a resolution 624 in the document. **Second discussion point from Bob Fulton is regarding section 6.10(b)(3)(ii) that discusses the credit for prior impact fees paid on a lot under 6.10(3)(i).** He is concerned about the part where if more than 10 years have passed that the builder/owner no longer gets a credit for impact fees paid by the developer. He feels this is unfair. **Third discussion point from Bob Fulton is section 6.12(c)(4) which discusses the interest to be paid on refunds.** He is opposed to putting a 2% cap on the interest rate. **Fourth discussion point from Bob Fulton is section 6.12(d)(1), the sentence that reads…"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."** He is unsure about the wording since only the Commission can do anything in regard to this ordinance. **Fifth discussion point from Bob Fulton regarding the document in general is that it is very difficult to read.** He said that this ordinance needs to be worded so the average citizen can read and understand it. Mayor DeVries commented that she agrees that the Ordinance needs to be easier to read. She has obtained copies of the Whitefish and Kalispell Impact Fee ordinances and particularly likes the Kalispell ordinance because it is very short and easy to read. It also contains a payment provision that she would like to make a discussion item. **Sixth discussion point is an installment payment of impact fees for builders/owners over a period of five years or some other length of time.** Commissioner Campbell asked if the Kalispell ordinance includes a chart of the fees similar to what is included in our ordinance. Mayor DeVries said that it did not have a chart. **Seventh discussion point from Mayor DeVries is in section 6.3(a) which reads "…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…"** She said this should probably read no later than rather than no earlier than because we would not care if the fees were paid early but they cannot be paid late. Margie Hendricks commented that she

had obtained copies of Bozeman's and Belgrade's ordinances. They used the same firm to do their study and she had copies of their fee schedules. Commissioner Turner asked if Ms. Hendricks knew of any reduction in the fees for these cities. She replied that the fees were reduced 65% from the maximum allowable when they were first initiated and have remained at that level. **Eighth discussion point involves several of the definitions starting on page 4 in section 6.5.** Bob Fulton said under the definition of Building Permit it refers to the "…permit required for new construction, remodeling, redevelopment and additions pursuant to the Polson Development Code…" He is fairly certain that building permits are not addressed in the Polson Development Code. City Manager Crossett decided to come back to a full discussion of the definitions as part of the detailed discussion on each item. Ben Griffing stated that in section 6.2(d) there is redundancy in the wording. The sentence "The impact fees set forth in this chapter establish a fair and reasonable method of regulating New Development in the City" should be removed. Margie Hendricks stated that there is a conflict of interest for City Attorney Raymond to be writing this ordinance. In her view, he can benefit from the outcome of this ordinance depending on how it is written. City Manager Crossett replied that that topic is not relevant to the substance of the document. Bob Fulton pointed out that in section 6.10(3)(i) it states that fees for commercial lots are to be calculated based on a commercial structure of 50,001 to 100,000 sq ft but that the fees are flat. City Attorney Raymond stated that it should include the words Fire Impact Fee schedule because those fees are the only one calculated on square footage. Elsa Duford read the definition of impact fees from MCA 7-6-1601: "Impact fee means any charge imposed upon development by a governmental entity as part of the development process to fund the additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee collected."

City Manager Crossett divided the list of discussion items into substantive matters and administrative and/or grammatical matters and started the discussion on the substantive matters.

Discussion of section 6.10(b)(3)(ii) – page 12: Bob Fulton commented that he does not think it is fair to have the credit for impact fees paid by the developer to sunset after 10 years, which would cause the builder/owner to pay the full amount. Commissioner Turner stated he would like to see the 10 year limit removed. Dennis Duty said the impact rests with the builder/owner who would then pay the full fee after 10 years as opposed to the developer which only pays the one-half. Commissioner Campbell agreed that a builder/owner should get credit for either impact fees or capital improvement fees at the time that their fees are paid regardless of how much time has passed. City Attorney Raymond provided history on this policy saying that the Council did not want a burden to be placed on the staff for long-term record keeping. Commissioner Campbell asked City Clerk Dooley if this would be burdensome to the finance department. City Clerk Dooley explained that currently the builder/owner gets a 50% credit for impact fees paid by the developer so in essence the developer pays 50% of the fees and the builder/owner pays 50% of the fees. The builder/owner also receives a credit for the capital improvement fees (fees charged prior to implementation of the impact fees) in subdivisions where those were paid and this would not change. City Clerk Dooley said the record keeping would not be a problem. Commissioner Campbell would like to eliminate all exceptions on any subdivisions so that all new development is paying impact fees. City Manager Crossett did a straw poll which favored removal of the 10 year sunset provision in this section. Commissioner Lies said that this change would also remove section 6.10(b)(4) – the transition provision. Commissioner Lies explained that all new development would now be subject to impact fees since there are no subdivisions in transition – there are no exclusions. Commissioner Campbell stated that from here on there are no exceptions – all new development will be subject to impact fees. City Attorney Raymond commented that section 6.10(b)(4) says exactly that. Commissioner Campbell stated that this was a long way of saying there are no exceptions. City Attorney Raymond

explained that paragraph four takes note of capital improvement fees paid (precursor to impact fees) and that those would continue to be netted against future impact fees.

Discussion of section 6.12(c)(4) – page 17: City Attorney Raymond said that in the original ordinance the interest on refunds was a flat rate of 5%. After the ordinance was passed it became clear that the City was not earning 5% on their invested funds. Another ordinance (#643) was passed that reflected the language in paragraph 4 of this section which refunds interest at the current rate that the City is earning and caps the interest rate at 2%. Ordinance 643 would be repealed after passage of Ordinance 661. City Clerk Dooley said that City Treasurer Manicke has a record of the rate of interest that was earned each period so the amount of interest can be calculated fairly accurately. Mayor DeVries commented that she would like to see a set rate at the time the refund is applied for. City Manager Crossett suggested using the rate of interest on Treasury Bills. A citizen clarified that the rate should be established at the time that the refund is applied for. The general consensus was not to cap the interest rate at 2%, but to use a rate of interest tied to Treasury Bills or other investment instrument. Mayor DeVries said that City Treasurer Manicke could provide us with rates over a period of time.

Discussion on general readability of the Ordinance: Commissioner Turner said that Kalispell's ordinance is three pages and fairly simple to read. But, he understands that the City does need to cover its bases. City Manager Crossett said there are a lot of things that need to be covered in the Ordinance. Commissioner Turner would like the majority of people to be able to easily read and understand the Ordinance. Water & Sewer Superintendent Porrazzo said that having the additional language in the Ordinance makes it easier to defend. Some of the City's agreements are too simple. Mark Nunlist questioned whether any other attorney has looked at this document. He said that it might be worth the extra money to have another attorney proof read the document and to help the Commission and others understand it. Judy Preston said that the City had difficulty following Ordinance 624 and maybe that was because it was too long and hard to understand. Mayor DeVries said Whitefish's ordinance is about the same length as ours, but it is much easier to read. City Clerk Dooley said that section 6.16 on page 20 should be removed because it makes the document more confusing. Commissioner Campbell asked if this section deals with the Resolution 627 hook-up fees. City Attorney Raymond said that this was from Resolution 627 and he decided to incorporate it here so it would all be in one document. Mayor DeVries reviewed her copy of Resolution 627 and said that the language in this section is not from Resolution 627. Water & Sewer Superintendent Porrazzo said that the fees in this section have to do with the actual costs to hook-up water and sewer. Commissioner Turner said that removing this section would clean-up the document. He commented that when he comes in, as a builder, to get a permit he likes seeing the fees separated between impact fees, hook-up fees and building permit fees. Mayor DeVries said section 6.16 was a source of confusion when the Ordinance was first discussed and she is still confused by it. She said that she has been told it is the Public Service Commission fee. She is not aware of any fee that is recalculated each August as it has not been done during her tenure.

Discussion on payment of impact fees over time: Mayor DeVries read a section from Kalispell's impact fee ordinance – "The party responsible for the payment of impact fees may elect to pay certain fees over a period of five (5) years in five (5) equal installments, each installment bearing an annual rate of interest of five percent (5%) on the remaining principal balance. The first payment will be due and paid to the Kalispell Building Department upon application for a building permit or at the time of wastewater or water service connection or well or septic permitting. In the event the first payment is made between January 1st and June 30th the first installment payment shall be placed on the tax roll to be due November of the same year." She further stated that the installment payment agreement places a lien on the property. A citizen asked if this would be for developers and builders particularly those building a spec

house. Mayor DeVries said that it could be set up a number of ways. Commissioner Campbell said that Kalispell's ordinance states that single family residences can use the installment method for all impact fees and all other development could use the installment method for all impact fees in excess of $500. Water & Sewer Superintendent Porrazzo said that he thinks the installment method would work well for someone building a single family residence but he does not think it should apply to commercial development. Parks Superintendent Sargeant expressed concerns over the bookkeeping aspect of this. She is wondering if we will be able to keep track of the partial payments. City Clerk Dooley said it would be placed on the tax roll each year so it would be similar to other types of payments that are being billed that way. Mayor DeVries pointed out that the City will earn interest on the installment payments which is helpful. Dennis Duty commented that since it becomes a lien on the property it really doesn't matter if the property is single family or commercial development. City Manager Crossett took a straw poll on this which favored having an installment agreement that would apply to all types of development.

Discussion of section 6.3(a) – page3: Mayor DeVries said this section states that fees are payable "no earlier than" in several places. She said it should say "no later than". City Attorney Raymond agreed with that change.

Discussion of definitions starting on page 4:
"Connection" - Bob Fulton questioned the definition of "Connection" which includes the connection of a new main line serving New Development. City Attorney Raymond said the connection of a new main is for the developer and presently triggers a payment of 50% of the impact fee. Dennis Duty asked for clarification on this point. Commissioner Campbell clarified that there should not be an impact fee when one water main is connected to another water main – to extend the system. City Attorney Raymond said the current structure is to charge the developer 50% of the impact fees at the time the connection is made to the City's existing water main. Bob Fulton gave an example of water mains that are currently not associated with any preliminary platted phase in Ridgewater. The mains were installed by the developers but currently do not serve any approved lots, so he does not feel impact fees should be due until the mains are used. Water & Sewer Superintendent Porrazzo said that Dennis Duty was not charged impact fees when the mains were installed. The time of connection – at preliminary plat approval – is when the impact fees would be due. Commissioner Campbell said the wording in the definition should remain as-is because this will give the City the option to determine at what point the impact fees should be paid.

"Dwelling Unit" – Bob Fulton commented that the use of the words "single household" would exclude the construction of an apartment on existing property from impact fees. City Manager Crossett clarified that he was referring to a "mother-in-law" or "grandma" apartment that may or may not be attached to the main home. Water and Sewer Superintendent Porrazzo said that currently if the service to the apartment is connected from the existing home's line; there is only the $100 connection fee. However, if an entirely new connection is established that could later be split again this does trigger impact fees. City Attorney Raymond referred to section 6.6 on page 8 that further explains that there must be a net increase in demand units for the impact fee to be triggered. For example, if the mother-in-law apartment is attached to the same meter as the main home, there is no increase in demand units and no impact fees.

Gross Floor Area (gfa)- Bob Fulton pointed out that the definition of gross floor area refers to the ITE Trip Generation Manual for calculation of the gross floor area. He said that it would be easier if the ITE Trip Manual definition was included in this document instead of just making reference to it.

Discussion of Resolution No. 1027: City Manager Crossett decided to move the meeting along by starting a discussion of Resolution No. 1027 which addresses the amount of impact fees to be paid. Commissioner Lies proposed that there should be a 75% reduction in all impact fees and that the reduction would be retroactive to May 7, 2012. Prior to that date, the amount of impact fees paid would not be reduced. Ben Griffing questioned why only water and sewer impact fees are reduced in the Resolution, he thinks all impact fees should be reduced. Paul London would like to see a 100% reduction in impact fees for one year. Commissioner Turner responded that he has been told that if the impact fees are eliminated by a 100% reduction that the City would have to start over with a new study before reinstating the impact fees and we don't want to burden the taxpayers with this cost again. Water & Sewer Superintendent Porrazzo said the impact fee study was $58,000. Bob Fulton said that we should base the percentage reduction on data that the City has from the procedures, formulas and functions that are reviewed each year rather than selecting a random number. City Manager Crossett said that the City is not using a scientific approach to deciding the percentage reduction. Commissioner Campbell said that the initial discussion was a 50% reduction which he thought was large, but since that time the percentage has grown. He wants to see some reduction that will spur growth. City Manager Crossett said that there are some university studies particularly a University of Florida study that indicates that a reduction in impact fees does not necessarily spur growth. There may be a psychological element to reducing the impact fees that could have some effect. Judy Preston understood that the City of Polson Impact Fees were one of the highest in Montana when they were initiated and she is wondering if they are still high. City Manager Crossett said that he is not aware of where we fall with other cities at this point. She would like to see a reduction in all impact fees, not just water and sewer. Water & Sewer Superintendent Porrazzo said that a 50% reduction in water and sewer impact fees would just about net him nothing because of the credits that are given against the fees, but a 50% reduction for fire and parks would still give those departments revenue to work with. Commissioner Turner has talked to other builders and they generally agree that an 80% reduction would be good. He commented that an 80% reduction would show that the City is trying to promote growth. Water & Sewer Superintendent Porrazzo said that this can be reviewed annually. If it is proven that the 80% reduction did nothing to spur growth, then the rate can be adjusted back up. Mayor DeVries asked if the developer has paid 50% of the unreduced impact fees and now we reduce the impact fees 50% will we owe money back to the subsequent builder. The general consensus was that the impact fee would just be zero. Mayor DeVries said that she would like to see what the impact fees are for Whitefish, Kalispell, Missoula and Hamilton so we can get a sense of what is being charged in areas around Polson. Commissioner Turner said that we have six building permits now, but we could generate twenty with the reduction that would provide increased property tax revenue. Commissioner Campbell said that he would like to move forward with a percentage reduction, but that other cities' fees would be helpful in the yearly analysis. Water & Sewer Superintendent Porrazzo agreed that the Commission needs to decide on a percentage now and then reevaluate it next year. Elsa Duford asked if this reduction in impact fees would affect the water and sewer operations revenue. Water and Sewer Superintendent Porrazzo responded that impact fees are above and beyond the normal operating costs so operations would not be affected. City Manager Crossett explained that impact fees are designed to compensate for increased development so that the City will be able to maintain services through its equipment and infrastructure at a level that will support the new development. Dennis Duty said that impact fees need to be spent where the impact of those fees comes from. As an example he said that impact fees paid by those living north of the bridge cannot be used to benefit Mission Bay homeowners. Several people responded that that is not correct, park impact fees benefit all parks, fire impact fees can be used to purchase equipment that benefits everyone. Water & Sewer Superintendent Porrazzo said water and sewer impact fees can be used for general upgrades to the entire water and sewer system. City Manager Crossett said that impact fees cannot be used for maintenance, but water and sewer fee revenues can be used for infrastructure purchases. Parks

Superintendent Sargeant said that in most cases she would prefer to receive cash-in-lieu of parkland instead of impact fees because the cash-in-lieu has no restrictions on how it can be spent for parks whereas the impact fees can only be spent on infrastructure and equipment that meet certain guidelines. Parks Superintendent Sargeant asked for clarification on what would happen if the impact fees were reduced 100%. Commissioner Campbell explained that when the impact fee rate schedule was established, the City charged the maximum amount allowable which he said was a smart idea. If the City eliminates the fees by reducing them 100% the rate schedule is effectively eliminated. In order to reinstitute the impact fees it would require a new rate study which would be very expensive. Paul London said that he wanted a suspension of the impact fees not elimination of the fees. City Attorney Raymond said that a 100% reduction would not be doing away with the rate schedule as established; it would do away with the practical effect of the rate schedule which is the collection of fees. City Clerk Dooley asked how the calculation would be made, because if the percentage is off of the gross impact fee than those in subdivisions where the developer has paid impact fees already, would essentially pay zero fees because of the developer credit. Water & Sewer Superintendent Porrazzo said his understanding is that the percentage would be on the net impact fee. For example, if the impact fees are $7,000 and the developer has paid $3,500 the builder/owner would pay $3,500. If the percentage is calculated on the gross, then the impact fee would be $3,500 – the builder/owner would get credit for $3,500 and owe zero impact fees. If the percentage is calculated on the net, the impact fee would be $7,000 – the builder/owner would get credit for $3,500 which would be a net of $3,500 which would then be reduced by the percentage, i.e. 50% and the builder/owner would then pay $1,750. City Manager Crossett said the calculation method could be decided later. Bob Fulton said that there are areas in town where the builder/owner has to pay all of the impact fees because they do not get the benefit of a developer that has paid 50% of the fees. A general discussion ensued with the consensus being that the percentage should be calculated on the net fee owed so that all properties will pay some impact fees. A citizen asked how the admin fee of 5% would be calculated. City Manager Crossett said that it would be added to the net amount that is owed. City Manager Crossett proposed five different percentages 100%, 95%, 80%, 75% and 50%. In the straw poll 80% received the most votes, followed by 75%, then 100% & 95% and lastly 50%. Commissioner Campbell asked if the start date of May 7, 2012 would remain. City Manager Crossett asked the audience if they would support an effective date of May 7, 2012 which was proposed by Commissioner Lies. The straw poll indicated support for this. Dennis Duty asked if the revised Ordinance would be on the Commission Meeting agenda for May 21st. City Manager Crossett indicated that the time frame would be too short. A citizen asked if this would be reviewed again in a year at this time. Commissioner Lies said it would be reviewed in a year. City Manager Crossett said the Ordinance allows it to be reviewed and changed at any time.

PUBLIC COMMENT ON SIGNIFICANT MATTERS TO THE PUBLIC:

Elsa Duford asked if Ordinance 661 has already been adopted and if the documents would be on the June 4th agenda. Mayor DeVries responded that neither the Ordinance nor Resolution has been adopted and that the documents will not be on the next meeting's agenda.

Commissioner Campbell noted that a $25,000 donation had been received today from the McCann Family for improvements to Boettcher Park's playground.

Mayor DeVries commented that the Recycling Center is now open. Parks Superintendent Sargeant said the bins are out at the Sports Complex and are for residential and small business use. She reminded everyone to be sure to use the correct bins for certain recyclables.

The meeting adjourned at 8:35 p.m.

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Mayor Pat DeVries

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Attest: Cindy Dooley, City Clerk