

DRAFT - ORDINANCE #624 OF THE CITY OF POLSON, MONTANA

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA, ESTABLISHING TITLE 6 OF THE POLSON CITY CODE (“CITY CODE”), THE CITY OF POLSON DEVELOPMENT IMPACT FEE ORDINANCE; PROVIDING A SHORT TITLE; PROVIDING FINDINGS, INTENT, AUTHORITY, AND DEFINITIONS; PROVIDING FOR APPLICABILITY; ESTABLISHING IMPACT FEE DISTRICTS; PROVIDING FOR IMPOSITION OF IMPACT FEES; PROVIDING FOR CALCULATION OF IMPACT FEES AND ESTABLISHING IMPACT FEE SCHEDULES FOR PARKS, WATER, SANITARY SEWER, AND FIRE-RESCUE, PROVIDING FOR ADMINISTRATION OF THE IMPACT FEE SYSTEM; PROVIDING FOR A SERVICE CHARGE; PROVIDING FOR ADMINISTRATIVE PETITIONS; PROVIDING FOR APPEALS TO THE CITY COUNCIL; PROVIDING FOR JUDICIAL APPEALS; PROVIDING FOR EFFECT ON ZONING AND SUBDIVISION REGULATIONS; PROVIDING FOR IMPACT FEES AS AN ADDITIONAL AND SUPPLEMENTAL REQUIREMENT; PROVIDING FOR ALTERNATIVE COLLECTION METHODS; PROVIDING FOR LIBERAL CONSTRUCTION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE AND TIME.

WHEREAS, the City Council of Polson, Montana, (hereinafter “Council”) has determined that the Polson municipal corporation is experiencing development and redevelopment which generates a need for additional public facility capacity and capital equipment; and

WHEREAS, impact fees are a necessary and indispensable mechanism the City uses to help shift the cost of providing public facilities needed to accommodate new development; and

WHEREAS, the Council has examined the impacts generated by new development resulting in the need for additional public facility capacity and capital equipment and has determined that the impact fees adopted by this ordinance are necessary to protect, promote and preserve the public health, safety and welfare; and

WHEREAS, the Council has considered the information and recommendations presented in “Development Impact Fees, City of Polson, Montana” by TischlerBise, Fiscal, Economic & Planning Consultants, dated February 5, 2007, and comments from the public and other interested parties; and

WHEREAS, the Council has determined that the proposed development impact fees are based on a rational nexus between the demand for public facilities generated by new development and the impact fees to be imposed on new development; and

WHEREAS, pursuant to the provisions of Section 7-6-1604 of the Montana Codes, the Impact Fee Advisory Committee has reviewed and monitored the process of calculating, assessing, and spending the impact fees as recited herein, and has found the same consistent with the mandates of Montana law and with the adopted Master Plan of the City of Polson, Montana.

WHEREAS, the City has noticed, advertised, scheduled and held a public hearing in compliance with Montana statutes on this proposed ordinance; and

WHEREAS, the Council, after hearing from the public as well as from staff and professional consultants, has determined that it is necessary to adopt and implement the proposed ordinance in order to protect public health, safety and welfare and to promote the public interest;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA:

Section 1. The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. Chapter 11 of the City Code is hereby established as specifically set forth as follows:

Sec. 6.1. Short title.

This chapter shall be known and cited as the "Polson Development Impact Fee Ordinance."

Sec. 6.2. Findings.

The City Council of Polson, Montana (hereinafter "Council") 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 Council, and census and population studies predict that growth will continue and will create significant demands for public facilities needed to accommodate New Development.
- (c) The City of Polson's Master Plan and the Capital Improvements Plan, as amended from time to time, 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) At regularly scheduled and advertised meetings of the City Council on January 24, 2007, and February 5, 2007, the Council discussed projected New Development in the City, the projected need for additional public facilities and capital equipment due to projected New Development,

the increased costs of providing public facilities and capital equipment needed to accommodate the projected New Development, and the need to adopt impact fees to help provide additional public facility capacity and capital equipment needed due to New Development.

- (g) The Council hereby finds and declares that all New Development, as defined herein, within the City generates an increased demand for System Improvements for park improvements and trails, 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 Council 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.
- (h) The Council 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.
- (i) The Council 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 Council 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 Council deems it essential and necessary to adopt this chapter as hereinafter set forth.

Sec. 6.3. Intent.

- (a) This chapter is intended to regulate New Development by imposing Impact Fees, 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 or well or septic permitting, 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. 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, Economic & Planning Consultants, dated February 5, 2007.

Sec. 6.4. Authority.

In the creation of the Impact Fees, the Council is exercising its general powers local government powers (Effective July 1, 2006, the foregoing sentence is amended to read, "In the creation of the Impact Fees, the Council is exercising its charter self-government powers.") IN addition the Council 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. 6.5. Definitions.

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

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 11-12(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 Council or *Council* shall mean the City Council of Polson, Montana.

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 and individual lot or building in New Development to City water or sanitary sewer main lines, or the connection of a new main line serving New Development to existing City water or sanitary sewer main lines.

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 Chapter 6.9 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 that add capacity to the City's fire and rescue system, including facilities, fire suppression vehicles and equipment, and emergency medical services vehicles and equipment.

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 prior to Building Permit or water or wastewater connection authorization issuance 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.

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.

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 Council (effective July 1, 2007 “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 Projects, as defined in this chapter, that provide additional capacity needed to accommodate New Development 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, 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. 6.6. Applicability.

- (a) 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 or well or septic permitting, 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. The Applicant has the burden of submitting documentation to the City proving the type and amount of previously existing development or use for determination by the City of

the net increase, if any, for calculation of Impact Fees due. In such event impact fees shall be imposed only for the net increase between the old and new demand units. No refund of Impact Fees previously paid shall be provided for any decrease in the amount or type of development.

- (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.
- (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. 6.7. Establishment of Impact Fee Districts.

In furtherance of the implementation of this chapter, the Council 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 boundary of the City, as may be adjusted from time to time.
- (d) Sanitary Sewer Impact Fee Benefit District which boundary is identical with the boundary of the City, as may be adjusted from time to time.

Sec. 6.8. Imposition of Impact Fees.

No Building Permit shall be issued, nor any water or wastewater connection made, for New Development in the City unless the Applicant therefore has paid the applicable Impact Fees and applicable Service Charge, 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. 6.9. 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 shall prepare and approve documentation, and 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 the City Council (effective July 1, 2007 “City Manager”) or a final decision issued by the Council after a timely appeal, the Impact Fees due shall be calculated based on the petition determination or Council (effective July 1, 2007 “City Manager”) decision.

(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	\$ 1,020.00
All Other Housing Units	\$ 806.00

- (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	\$3,310.00
All Other Housing Types	\$2,617.00
<i>Nonresidential Development (per meter/ size in inches)</i>	
0.75	\$3,313
1.00	\$ 5,633
1.5	\$ 10,935
2.00	\$ 17,563
Fees for meters larger than four inches will be based on an annualized day demand and the net capital cost per gallon of capacity.	

- (3) Sanitary Sewer System 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
1.5	\$ 5,061
2.0	\$ 8,129
Non residential sewer fees are based on water	

meter size. Fees for meters larger than four 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	\$ 809
All Other Housing Types	\$ 639
<i>Nonresidential Development (per gross square foot)</i>	
820 Commercial/Shop.Ctr. 50,000sf or less	\$ 1.40
820 Commercial/Shop.Ctr. 50,001 – 100,000sf	\$ 1.17
820 Commercial/Shop.Ctr. 100,001 – 200,000sf	\$ 1.00
710 General Office 25,000sf or less	\$ 0.48
710 General Office 25,001 - 50,000sf	\$ 0.41
710 General Office 50,001 – 200,000sf	\$ 0.29
720 Medical-Dental Office	\$ 0.94
140 Manufacturing	\$ 0.10
770 Business Park	\$ 0.22
110 Light Industrial	\$ 0.18
150 Warehousing	\$ 0.13
610 Hospital	\$ 0.46
151 Mini-Warehouse	\$ 0.06
<i>Other Nonresidential Development (as indicated)</i>	
320 Lodging (per room)	\$ 147
520 Elementary School (per student)	\$ 22
530 Secondary School (per student)	\$ 32
565 Day Care (per student)	\$ 56
620 Nursing Home (per bed)	\$ 62

Sec. 6.10. Administration of Impact Fees.

- (a) *Collection of Impact Fee.* Impact Fees calculated and imposed pursuant to this chapter shall be collected by the Collecting Agency prior to issuance of a Building Permit or of a Connection.
- a. *Minor Subdivision.* Impact Fee shall be calculated at the time of final plat approval and the amount of such fee applicable to each such lot shall become a condition of such final plat approval and shall be due and payable by each individual owner thereof at such time as each such applies for a Building Permit or for a Connection.
 - b. *Major Subdivision.* Impact fees shall be calculated at the time of final plat approval and the total amount of such fees, aggregating each Impact Fee attributable to each lot in such major subdivision, shall be paid prior to the Connection of any new water or sanitary sewer main lines to existing City main lines.
 - c. *Transition.* The City recognizes that at the time of the passage of the within Ordinance several major subdivisions have received preliminary plat approval but have not yet received final plat approval. In such cases the terms of subsection 6.10(a)(a) shall apply, subject to any Impact Fee credit agreements reached under Section 6.12 hereof.

- (b) *Service Charge.* A Service Charge of five (5) percent of the total Impact Fee assessment shall be collected at the same time as the Impact Fee. The Service Charge is not a part of the Service Fee and shall be accounted and used as described in Section 6.11 hereof.
- (c) *Accounting and Reporting of Impact Fee Collections and Expenditures.* Impact Fees shall be transferred from the Collecting Agency to the City Treasurer 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 City Treasurer 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. 6.12 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.
- (d) *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, 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.
- (e) *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.
- (f) *Annual review and modification:* Beginning with adoption of the Fiscal Year 2008-2009 Budget, the City shall annually, no later than 120 days after the annual capital budget and capital improvements program adoption process, review the 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 Council 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 Council's authority to amend this chapter at any time.

- (g) *Triennial review and modification:* The City shall conduct a complete review of the Impact Fees every three years 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 components of the Impact Fee system. The triennial report issued based on this review shall be distributed to the Council by the City Manager. The triennial report may be used to fulfill the annual report requirement for that year. The City shall endeavor to adopt any changes and updates to the Impact Fee system, including updated fee calculations, within a year of completion of the triennial report.

Sec. 6.11. Service Charge.

A Service Charges in connection with the collection of Impact Fees is hereby established. The Service Charges 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 Service Charge may also be used to defray expenses related to petitions, appeals and/or legal challenges to the Impact Fee system. The Service Charge shall be reviewed in connection with Sections 6.10 (f) and (g) and shall be set based upon a review of incurred and anticipated costs to create, administer, update and manage the Impact Fee system and shall not exceed actual costs to the City.

Sec. 6.12. Administrative Petitions for Impact Fee determinations, refunds and credits.

- (a) *Petition process.*
- (1) Petitions for an Impact Fee determination, refund of Impact Fees and/or credit against Impact Fees 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 a fee of \$100.00.
 - (2) All petitions shall be submitted to the City Manager for processing and preparation of a staff report and recommendations by the appropriate staff on the petition, and the final determination on the petition shall be issued by the City Manager. The staff report and recommendations shall be forwarded to the City Manager no later than sixty (60) days after filing of a complete petition. The City Manager shall, no later than ninety (90) days after filing of the complete petition, issue a written determination on the petition, with the reasoning for the determination, and, if needed, direct the appropriate City staff to take the actions necessary to implement the determination.
 - (3) 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. The City Manager, or his authorized representative, is authorized to determine whether a petition is complete and whether additional data or supporting statements by an appropriate professional is needed. If the City Manager, or his authorized representative, determines that the petition is not complete, a written statement detailing the insufficiencies of the petition shall be provided to the petitioner within thirty (30) days of initial filing of the petition. The date of such written determination of insufficiency shall toll the time limits established in this section until submittal of a complete petition.

(4) 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 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 determination.* Any Applicant prior to or in conjunction with the submission of an application for a Building Permit or within thirty (30) days of the date of payment of Impact Fees, may petition the City Manager 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, or ii) 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. 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; ii) the Building Permit for which the Impact Fee has been paid has lapsed for noncommencement of construction; or iii) 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 waive any right to an Impact Fee refund.

(3) The petition for refund shall be submitted to the City Manager 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 at the rate of three percent per annum from the date the same was initially collected.

(d) *Petition for credits against Impact Fees.*

(1) Any Applicant, as defined in this chapter, who elects to construct or dedicate all or a portion of a System Improvement, as defined in this chapter, or, who escrows money with the City for the construction of a System Improvement, may, if all criteria in this chapter and this subsection (d) are fulfilled, be granted a credit for such contribution against the Impact Fees otherwise due for the same type of System Improvement. The Applicant must, prior to the Applicant's construction, dedication or escrow 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, 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 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, heard, and determined 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.

(2) If it is determined that the need for the System Improvement is clearly documented in accordance with Section 7-6-1602 of the Montana Codes and/or this Chapter, the City Manager shall determine the appropriate amount of the credit. The amount of the credit 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. In no event shall the credit 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, the Applicant shall pay the Impact Fees due less the credit at the time of issuance of the Building Permit.

(3) If a credit petition is approved, the Applicant and the City shall enter into a credit 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, 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 payment requests, and viii) timing of payments by the City. No Impact Fee credits shall be paid or provided 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. The City's obligation to pay Impact Fee credits shall be limited to the Impact Fees collected from the development for a period not to exceed ten (10) 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. The credit agreement shall provide for forfeiture of any Impact Fee credit remaining at the end of

such ten (10) year period. The credit Applicant shall agree 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.

Sec. 6.13. Appeal to City Council.

- (a) A petition determination by the City Manager shall be final unless a written notice of appeal to the Council is filed with the City Manager within 20 days of the date of the written determination by the City Manager. Such appeal may be filed by the Applicant, the petitioner, or by any officer, department, board, commission, or agency of the City. Such appeal by Applicant must be accompanied by a \$150.00 fee. Failure to timely file a request for review of a petition determination shall waive any right to further review of the petition determination.
- (b) Appeals shall be filed on a form provided by the City and accompanied by ten (10) copies of all documents for consideration by the Council, including but not limited to, the petition submittal and all accompanying documents, the petition determination, any additional documents, exhibits, technical reports, or other written evidence the appellant wants the Council to consider. Should the appellant want to submit additional written material after the initial filing of notice of appeal, ten complete copies of such material shall be submitted to the City Manager no later than thirty (30) days prior to the hearing date. If any material is submitted after that date, the Council shall reschedule the hearing to a later date to provide adequate time for review of the material by City staff and the City Manager notwithstanding the ninety (90) day period established under Sec. 6.12(d) of this chapter.
- (c) The Council on review shall have full power to affirm, reverse, or modify the action of the City Manager so long as such Council action is based on applicable law and the provisions of this chapter. The appeal shall be heard by the Council not more than 90 days after the appeal is filed by the appellant, unless the appellant and City Manager agree in writing to a later time. The decision of the Council shall be reduced to writing and signed by the Mayor.
- (d) If a person decides to appeal any decision made by the City Council, such person will need a record of proceedings, and for such purpose the person may need to ensure that a verbatim record of proceedings is made which record includes the testimony and evidence upon which the appeal is to be based.

Sec. 6.14. Judicial Review.

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

Sec. 6.15. 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, which shall be operative and remain in full force and effect without limitation with respect to all such development.

Sec. 6.16. 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 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. 6.17. 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. 6.18. 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. 6.19. Severability.

Should any sentence, clause, part 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.

First Reading: February 5, 2007

Second Reading: (proposed for March 19, 2007)

ADOPTED in regular session of the City Council of the City of Polson, Montana, this _____ day of _____, 2007.

EFFECTIVE DATE: _____.

Jules Clavadetscher, Mayor

ATTEST:

Aggi Loeser, City Clerk