

**ORDINANCE NO. 661**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA, SUBSTANTIALLY REVISING ORDINANCE 624, OTHERWISE CODIFIED AS TITLE 6 OF THE POLSON MUNICIPAL CODE (“MUNICIPAL 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 AND IMPLEMENTATION OF THE IMPACT FEE SYSTEM INCLUDING CALCULATING AND ASSESSING UNITARY AND SPECIAL CONNECTION COSTS; PROVIDING FOR A SERVICE CHARGE; PROVIDING FOR ESTABLISHMENT OF AN IMPACT FEE REVIEW BOARD, PROVIDING FOR ADMINISTRATIVE PETITIONS FOR REVIEW; 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; REPEALING RESOLUTION 627; REPEALING ORDINANCE 627; REPEALING ORDINANCE 643; AND PROVIDING FOR AN EFFECTIVE DATE AND TIME.

WHEREAS, the City Council of Polson, Montana, (hereinafter “Council”) has adopted Ordinance 624, otherwise codified as Title 6 of the Municipal Codes; 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 functionality of Title 6 since the same was initially passed and finds it necessary and beneficial to revise the same; 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, the Council desires to collect and clarify all previous legislation bearing upon the administration of the impact fee system and ancillary matters; and,

WHEREAS, the Council desires to provide the several forms necessary for uniform administration of the impact fee system and ancillary matters:

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. Ordinance 624, otherwise known as Chapter 6 of the City Code is hereby revised in its entirety 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; 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 Council 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 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.
- (g) 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.
- (h) 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.
- (i) It is necessary and desirous to collect and clarify all fees related to new development and connection with the utility systems, and to simplify administration thereof.

**Sec. 6.3. 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. 6.4. Authority.**

The continued imposition and collection of Impact Fees is an exercise of the Councils’ 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:

*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 Council* or *Council* shall mean the City Council 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 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 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 Review Board*, hereinafter Review Board, shall mean that Board created hereunder to hear and make recommendations for Council 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. 6.6. 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. 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 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. 6.8. 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. 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 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 Council 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.

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

## (2) Water System Impact Fee Schedule.

<b>ITE Code/Land Use</b>	<b>Impact Fee per Demand Unit</b>
<b><i>Residential Development (per dwelling unit)</i></b>	
Single Family Detached	\$3,310
All Other Housing Types	\$2,617
<b><i>Nonresidential Development (per meter/ size in inches)</i></b>	
0.75	\$3,313
1.00	\$5,633
1.5	\$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 System Impact Fee Schedule.

<b>ITE Code/Land Use</b>	<b>Impact Fee per Demand Unit</b>
<b><i>Residential Development (per dwelling unit)</i></b>	
Single Family Detached	\$1,531
All Other Housing Types	\$1,210
<b><i>Nonresidential Development (per water meter/meter size in inches)</i></b>	
0.75	\$1,533
1.00	\$2,607
1.5	\$5,061
2.0	\$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.

<b>ITE Code/Land Use</b>	<b>Impact Fee per Demand Unit</b>
<b><i>Residential Development (per dwelling unit)</i></b>	
Single Family Detached	\$971
All Other Housing Types	\$768
<b><i>Nonresidential Development (per gross square foot)</i></b>	
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 – 200,000sf	\$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	\$0.55
151 Mini-Warehouse	\$0.07
<b><i>Other Nonresidential Development (as indicated)</i></b>	
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 council reserves the right to adjust by separate resolution from time to time the actual percentage to be imposed.

**Sec. 6.10. 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 d. 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 (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 (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 fees, 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 6.11 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 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.

(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 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.

- (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 Council 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. 6.11. 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 Sections 6.10 (f) and (g) 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. 6.12. 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 Council, which shall receive and consider the advice of the Review Board. The Council shall have full power to affirm, reverse, or modify the action of the Review Board so long as such Council action is based on applicable law and the provisions of this chapter. The decision of the Council 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, pursuant to Section 3.02.14 of the City Charter, the said 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 Council 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 parts 6.3(a) and 6.6(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 Council.
- (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 Council 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 Council. 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 Council. 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 an 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. 6.13. 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 City Manager with the Lake County district court in accordance with the legal rules applicable in such instance.

**Sec. 6.14. 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. 6.15. 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. 6.16. 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. 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.

Section 3. Chapter 4.02.330 (B) of the Polson Municipal Code is repealed.

Section 4. Chapter 4.06.030 (B) and (C) of the Polson Municipal Code are repealed.

Section 5. Resolution 627 is repealed.

Section 6. Ordinance 627 is repealed.

Section 7. Ordinance 643 is repealed.

Section 8. Ordinance 624 is repealed, as set forth in Section 2, above.

Section 9. All ordinances or parts of ordinances in conflict with any term herein are, to that extent, amended or repealed.

First Reading: April \_\_\_\_, 2012.

Second Reading: May \_\_\_\_, 2012.

ADOPTED in regular session of the City Council of the City of Polson, Montana, this \_\_\_\_ day of May, 2012.

EFFECTIVE DATE: Thirty days following passage of Second Reading.

\_\_\_\_\_  
Pat DeVries, Mayor

ATTEST:

\_\_\_\_\_  
Cindy Dooley, City Clerk

Approved as to form:

\_\_\_\_\_  
James Raymond, Raymond Law Office, PLLC  
City Attorney