

**Ordinance No. 668**

**EMERGENCY ORDINANCE AND ORDINANCE TO  
AMEND THE CITY OF POLSON DEVELOPMENT CODE  
REGARDING THE JURISDICTION AND PROCESS  
FOR THE REVIEW AND APPROVAL OF SPECIAL USE PERMITS**

**WHEREAS**, the City of Polson has adopted a development code for use in the planning, zoning and subdivision of properties within the City of Polson;

**WHEREAS**, the City Attorney of Polson had determined that the process for the review and approval of special use permits is not in compliance with Montana State Statutes (copy of such opinion has been presented to the Commission;

**WHEREAS**, a number of applications for special use permits (SUP) have been received by the City and immediate action was requested for processing of such permit applications;

**WHEREAS**, the City wants to assure its citizens of lawful process and review of such applications and determines that an emergency exists for the adoption of procedures that are in compliance with Montana statutory law;

**WHEREAS**, this matter of amendment to the Development Code of Polson, (1993) came on for hearing upon proper notice and the matter was fully heard and public comment was taken on May 5, 2014;

**WHEREAS**, the Commission adopted the changes to the Development Code at such hearing but adopted it as a standalone amendment to the Polson Development Code and not as a change to the Ordinances of the City;

**WHEREAS**, the action of the Commission needs to be ratified in proper form and this Ordinance was prepared to conform to the Rules of the Commission and Montana law;

**WHEREAS**, the need for action to require the City –County Planning Board to hear and act upon the pending applications for SUP is declared as an immediate emergency;

**WHEREAS**, the Commission seeks to adopt and amend these ordinances as expeditiously as possible and to that end hears this matter as an emergency measure and as a first reading of the ordinance amendments for permanent adoption;

**WHEREAS**, it appears in the best public interest that the following amendments to the Ordinances of the City of Polson be adopted;

**NOW, THEREFORE BE IT ORDAINED** that the following ordinances of the City of Polson be confirmed and amended as follows:

**(Page 10. PDC 1993.)**

**L. Special Use Permit Procedure.** The special use permit procedure implements the plan and these regulations by requiring intensive public review of developments that may have a significant impact on the landscape setting, public facilities and services, or neighboring land uses, and requiring that such developments comply with performance standards designed to ensure their compatibility with the landscape setting. The capacity of public facilities and services, and neighboring land uses.

1. **Pre-Application.** The purpose of this procedure is to ensure that a properly completed application is filed.

**(Page 11. PDC 1993.)**

- a. The developer shall file a request for pre-application review and a sketch plan of the proposed special permit use with the administrator.
- b. The administrator shall, within 15 days, conduct a pre-application review. Pre-application review is not a regulatory proceeding, but an opportunity for the applicant to be made aware of the requirements of these regulations. The need for a community impact report or environmental assessment shall also be determined at the pre-application review.

## 2. Application.

- a. The developer shall file a properly completed application form, a preliminary plat, any supporting materials necessary to demonstrate compliance with these regulations, and the required application fee with the administrator.
- b. The administrator shall place a hearing on the proposed special permit use on the agenda of the next regular board meeting for which these notice requirements can be met, and at which time will allow for its proper consideration. Notice of that hearing shall be provided as follows: i. by certified mail, at least 15 days before the hearing: to the developer and all adjoining property owners (including purchasers under contract for deed); ii. by newspaper publication, at least 15 days before the hearing: one legal notice in the official newspaper; and iii. by first class mail, at least 15 days before the hearing: to all potentially affected public agencies and public utilities, and any person who has requested mail notice of such hearings and paid the annual fee for that service specified in the fee resolution (see II.F.2.) All notices shall comply with II.N.
- c. The administrator shall prepare, or contract for preparation of a report that describes the proposed special permit use, its site, its context, and its compliance, or failure to comply with the applicable requirements of these regulations.
- d. ~~The board shall conduct a hearing on the proposed special permit use following the procedure established in II.R. At that hearing, the board shall determine whether the proposed special permit use is in compliance with the plan and these regulations. If the board finds that it complies, it shall approve the application. If the board finds that the proposed special permit use fails to comply, it shall reject the application. Conditions may be attached to the approval of any special use permit, as provided in II.M.~~

The board shall conduct a hearing on the proposed special permit use following the procedure established in II.R. At that hearing, the board shall determine whether the proposed special permit use is in compliance with the plan and these regulations. If the board finds that it complies, it shall recommend approval to the City Commission. If the board finds that the proposed special permit use fails to comply, it shall make a recommendation to the City Commission to reject the application. Recommended conditions may be attached to the recommended approval of any special use permit, as provided in II.M. Final decision to be made by the City Commission.

- e. Consideration of a special use permit application may be tabled for no more than 35 days.
- f. The administrator shall notify the ~~City Commission council~~/BOCC, BOA, developer, and interested parties who have specifically requested such notice of the board's recommendation within 10 days after it is made.
- g. ~~The board's decision may be appealed to the BOA using the appeals procedure of II.P. A notice of appeal must be filed with the administrator within 10 days after notice of the decision is issued, as required by e., above.~~

A decision of City Commission may be appealed to the Lake County District Court in accordance with Montana law.

**Division 3 ~ Appeals and Variances**

P. Appeals. Any decision of the administrator ~~or board~~ may be appealed to the BOA. Recommendations of the board (on subdivision permits) go to the council/BOCC, and may not be appealed to the BOA.

1. The appellant shall file a properly completed notice of appeal and the required appeal fee with the administrator, within 10 days after notice of the decision was issued. Supporting materials may be filed later, but not less than 10 days before the hearing.
2. The administrator shall place a hearing on the appeal on the agenda of the next regular BOA meeting for which the notice requirements can be met, and at which time will permit its proper consideration. Notice requirements for an appeal shall be the same as for the original permit application.
3. The BOA shall conduct a hearing on the appeal following the procedure established in I.I.R. At that hearing, the BOA shall determine whether the decision being appealed is in compliance with the plan and these regulations, and affirm, modify, or overturn that decision accordingly.
4. Consideration of an appeal may be tabled for no more than 10 days.
5. The administrator shall notify the appellant and interested parties who have specifically requested such notice of the BOA's decision within 10 days after it is made.

(Page 56. PDC 1993.)

CHAPTER XXI – DEFINITIONS

G. BOA. The Board of Adjustment, as required by 76-2-222, MCA. The BOA is an appointed body that hears variances, and appeals from decisions of the administrator ~~and board~~.

**PAST ORDINANCES REPEALED:** All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

**BE IT FURTHER ORDAINED** that this ordinance is enacted as an emergency measure to alleviate the problems and issues raised by the public and Montana law and that such ordinance is also to be enacted as a permanent ordinance of the City of Polson. Upon the effective date of the permanent ordinance, the emergency ordinance shall expire forthwith.

**BE IT FURTHER ORDAINED** the City Clerk is hereby instructed to codify this Ordinance in the Book of Ordinances and to index the same as suggested.

Emergency Effective Date: \_\_\_\_\_

First Reading: \_\_\_ayes \_\_\_nays \_\_\_abstentions

Second Reading: \_\_\_ayes \_\_\_nays \_\_\_abstentions

Effective Date: \_\_\_\_\_

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

Attest:

\_\_\_\_\_  
Cora E. Pritt, Clerk

Approved as to form and content:

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M. Richard Gebhardt, City Attorney