

Chapter 9 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

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ARTICLE 1. IN GENERAL

Sec. 9.01.010. Datum line for establishment of street grades; bench marks.

Sec. 9.01.020. Camping on city streets or property.

Sec. 9.01.010. Datum line for establishment of street grades; bench marks.

A datum line, or base, from which the grades of the several streets and avenues within the city shall be determined, is hereby defined, fixed and designated by reference to the described bench marks on file and of record in the office of the city clerk.

Sec. 9.01.020. Camping on city streets or property.

It shall be unlawful for persons to camp, tent or park a recreational vehicle on a city street or city property without the site being attended by the immediately adjacent real property to the camp, park or recreational vehicle. No person may camp, tent, or park a recreational vehicle on a city street or city property for a continuous period of more than 72 hours.

ARTICLE 2. STREET MAINTENANCE

Sec. 9.02.010. Street names to be as shown on official map.

Sec. 9.02.020. Streets and public places to be kept clear of obstructions and debris.

Sec. 9.02.030. Work in streets; permit required; interfering with authorized work prohibited.

Sec. 9.02.040. Obstructing or encumbering streets; permit required.

Sec. 9.02.050. Structures in streets; permit required.

Sec. 9.02.060. Obstructions; warning signals required.

Sec. 9.02.070. Removal of litter or obstructions; notice; work performed by city when; costs.

Sec. 9.02.080. Removal of obstructions; time limit; interfering when work performed by city prohibited.

Secs. 9.02.090-9.02.199. Reserved.

Sec. 9.02.010. Street names to be as shown on official map.

The several streets, avenues, alleys and public places and extensions of the same in the city shall hereafter be known and designated by the name applied thereto respectively on the maps and plats of the city, and additions, filed in the offices of the city clerk and the county clerk and county recorder. The city commission shall approve all names and designations.

Sec. 9.02.020. Streets and public places to be kept clear of obstructions and debris.

Except as otherwise provided by this code, streets, avenues, alleys, and public places of the city, including sidewalks, shall at all times be kept free, clear and clean of all obstructions, debris, encumbrances and encroachments which hamper or interfere with the free and safe use thereof by the public.

Sec. 9.02.030. Work in streets; permit required; interfering with authorized work prohibited.

- A. No person shall impede, obstruct, or tear up any pavement, sidewalk or crosswalk, or any part thereof; dig any hole, shaft, ditch or drain; or dig or remove any sod, earth, stones, sand or gravel from any street, avenue, alley and public place without first having obtained a permit from the city manager or his designee; or hinder or obstruct the making or repairing of any public improvement or work ordered or done by, or under the authority of the city.
- B. Permits for excavations in paved streets or alleys shall be subject to an application fee and a pavement degradation fee as established by resolution. Newly constructed streets, reconstructed streets, or streets that have been repaved shall be considered protected streets for a period of five years following construction. Permits for excavations in protected streets shall be subject to an additional pavement degradation surcharge as established by resolution.
- C. All applicants requesting permits to excavate in any public right-of-way shall either file or have on file with the city manager of public works a street opening bond prior to conducting any work in the public right-of-way. The company writing the bonds shall be licensed to do business in the state.
- D. All applicants requesting permits to excavate in any public right-of-way shall either file or have on file with the city manager of public works proof of general liability insurance

coverage, prior to conducting any work in the public right-of-way. The insurance company shall be licensed to do business in the state.

- E. The amount of bonding and insurance coverages required shall be as established by resolution.
- F. Pavement degradation fees or surcharges shall not be required for emergency utility repair work; installation of new fire sprinkler service lines required by the city building official, if no alternate connection point is available; or for infrastructure improvement work being done under the city's capital improvements program.
- G. Pavement degradation fees shall be deposited into the street maintenance fund.

Sec. 9.02.040. Obstructing or encumbering streets; permit required.

No person, association, company or corporation shall encumber or obstruct, or cause to be encumbered or obstructed any street, avenue, alley or other public place in the city by placing therein or thereon any building materials, trash, garbage, rubbish, debris, accumulated snow and ice removed from an adjoining private premises, or any article or thing whatsoever, without first having obtained permission in writing from the city manager of public works.

Sec. 9.02.050. Structures in streets; permit required.

No building or other structure, in whole or in part, shall be erected or placed upon any street, avenue, alley or public place within the city without permission in writing of the city manager first had and obtained.

Sec. 9.02.060. Obstructions; warning signals required.

When permission shall have been granted, as provided in this article, for the use of any portion of a street, avenue or public place of the city for any purpose whatsoever, the permittee shall cause warning lights to be set in such number and location in and about said street, avenue, alley or public place as will serve to, and give reasonable, proper and timely warning of danger or hazard to all persons lawfully using such street, avenue, alley or public place, or any part thereof, and shall take all other reasonably necessary precautions to prevent accidents to the public. The lights and protection shall be maintained between dusk and dawn of each and every day the street, avenue, alley or public place is rendered hazardous or unsafe for usual and customary use. Failure or omission to protect against accidents, as in this section provided, shall forthwith work a forfeiture of any permit which may have been granted with reference thereto.

Sec. 9.02.070. Removal of litter or obstructions; notice; work performed by city when; costs.

The city manager is authorized to order any article or thing whatsoever, including but not limited to accumulated snow and ice removed from an adjoining private premises, which encumbers, litters or obstructs any street, avenue, alley or other public place within the city, to be removed. If such removal is not made within six hours after notice to the owner or person in charge thereof to remove the same, or if the owner cannot be readily found for the purpose of such notice, the city manager of public works shall cause the same to be removed to some suitable place to be designated by the city manager, at the expense of the person, corporation

or association responsible therefor, and under the pains and penalties as hereinafter provided for violations of this article.

Sec. 9.02.080. Removal of obstructions; time limit; interfering when work performed by city prohibited.

Any building, fence, porch, steps, gallery or other obstruction now upon or hereafter placed or erected upon any street, avenue, alley or public place within the city, or which may be upon any new street, avenue, alley or public place which may hereafter be opened or created within the city, shall be removed therefrom within such reasonable time, not exceeding 30 days, and not less than three days after notice in writing has been given to the owner or person responsible for such obstruction shall be given by the city manager of public works; and if the owner or person responsible for such obstruction cannot be readily found for the purpose of such notice, it shall be the duty of the city manager of public works to cause the obstruction to be removed, in the city manager's discretion; and the expense of such removal shall be recoverable from the owner or person responsible for the obstruction in addition to the penalties herein provided; and every person who interferes with, resists or obstructs by acts or threats, or in any other manner, the removal of such obstruction under the order or direction of the city manager of public works, is guilty of a violation of this article.

Secs. 9.02.090-9.02.199. Reserved.

ARTICLE 3. STREET MAINTENANCE DISTRICT

Sec. 9.03.010. Definitions.

Sec. 9.03.020. Method of maintenance.

Sec. 9.03.030. Method of paying for maintenance.

Secs. 9.03.040-9.04.199. Reserved.

Sec. 9.03.010. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Maintenance" includes, but is not limited to, sprinkling, graveling, oiling, chip sealing, seal coating, overlaying, treating, general cleaning, sweeping, flushing, snow removal and leaf and debris removal.

Sec. 9.03.020. Method of maintenance.

All street, alley and public place maintenance to be done within the district or districts created by the city may be done by contract or by the city, or by both, in such manner as the commission may elect.

Sec. 9.03.030. Method of paying for maintenance.

- A. The city commission shall estimate, as near as practicable, the cost of the maintenance in each established district annually, not later than the second Monday in August. The commission shall pass and finally adopt a resolution specifying the district assessment option and levying and assessing all the property within each established district with an amount equal to not less than 75 percent of the entire cost of such work.
- B. The resolution levying the assessment to defray the cost of maintenance shall contain or refer to a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof, if known, and the amount levied thereon set opposite.
- C. Such resolution shall be kept on file in the office of the city clerk for public inspection.
- D. A notice of intent to adopt such resolution, signed by the city clerk, stating that the resolution levying the special assessment to defray the cost of maintenance in each established district is on file in the city clerk's office and subject to inspection for a period of five days, shall be published at least once in a local newspaper. The notice shall state the time and place at which objections to the final adoption of the resolution will be heard by the commission. The time for the hearing shall be not less than five days after the publication of the notice.
- E. At the time so set, the commission shall meet and hear all objections which may be made to such assessment or any part thereof and may adjourn from time to time for that purpose and may by resolution modify such assessment in whole or in part.
- F. A copy of the resolution, certified by the city clerk, must be delivered to the city Clerk and the assessments shall be placed upon the tax roll and collected in the same manner as other taxes and assessments.

Secs. 9.03.040-9.04.199. Reserved.

ARTICLE 4. SIDEWALK AND CURB CONSTRUCTION

Sec. 9.04.010. City engineer authority; materials, construction and widths.

Sec. 9.04.020. Repair of sidewalks by abutting owners; failure to repair.

Sec. 9.04.030. Fees; payments and deposit.

Sec. 9.04.040. Permanent concrete sidewalks required; when variance permitted.

Sec. 9.04.050. Notice to construct curb or sidewalk; form and contents.

Sec. 9.04.060. Construction ordered by city; warrant for payment of costs.

Secs. 9.04.070-9.04.199. Reserved.

Sec. 9.04.010. City engineer authority; materials, construction and widths.

All sidewalks and curbs which may hereafter be constructed upon any street or avenue in the city, whether ordered in by the city commission or constructed under the laws governing special improvement districts, or installed by any contractor or property owner, or otherwise, shall be constructed under the supervision, direction and inspection of the city engineer, and out of such materials as may be prescribed by the city engineer.

All sidewalks constructed in the central business district of the city shall have a minimum width of ten feet unless a variance is granted by majority vote of the city commission. All other sidewalks constructed on any of the streets and avenues of the city shall have a minimum width of five feet.

Sec. 9.04.020. Repair of sidewalks by abutting owners; failure to repair.

All owners or agents of owners with property abutting and fronting upon any street or alley within the corporate limits of the city are required to keep the public sidewalks immediately abutting their property in good order and repair. Each such owner shall be liable to the city for all losses to the city or recoveries from the city for damages to person or property of others caused by such owner's failure or that of such owner's agents to repair and keep in good order and reasonably safe condition all such sidewalks abutting and fronting such owner's property within the corporate limits of the city. The city may, at its discretion, through the city manager, notify such owner that repairs are necessary to put such sidewalk in good order and such owner shall, within 30 days after such notification, under the supervision of the city engineer, complete such repairs, as specified in such notice. If the person fails to make the required repairs, the city may repair same and pay for such repairs. The amount so paid by the city shall be lien upon the lot and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

Sec. 9.04.030. Fees; payments and deposit.

All fees shall be paid to the city clerk and deposited in the general fund.

Sec. 9.04.040. Permanent concrete sidewalks required; when variance permitted.

Permanent concrete sidewalks shall be constructed within and upon all of the streets and avenues of the city, provided that the city manager or his designee may issue a permit for the construction of temporary sidewalks of other materials.

Sec. 9.04.050. Notice to construct curb or sidewalk; form and contents.

Whenever the city commission orders a sidewalk or curb, or either thereof, constructed in front of any lot or parcel of land within the city, without the formation of a special improvement district, pursuant to the provisions of MCA 7-14-4109, or any acts supplementary thereto or amendatory thereof, notice of such order of the city commission shall be given by the city manager to the owner or agent of such property, by mailing notice to the owner's or agent's last known address, according to the requirements of MCA 7-1-4120, and such notice shall be in substantially the following form:

No. _____ Polson, Montana, _____, 20_____
TO _____

YOU ARE HEREBY NOTIFIED that the city commission of the City of Polson, at its meeting, held on the _____ day of _____, ordered the _____ of a cement concrete _____ in front of that certain lot or parcel of land owned by you, situated in the City of Polson, Montana, and described as follows, to-wit:

Lots _____
Block _____ Addition.

Said improvement to be constructed in accordance with said order and the approved specifications therefor, on file in the office of the City Engineer of said City, and at the established grade of said street.

You will be allowed 30 days from and after the service of this notice upon you to construct, or cause to be constructed, the said improvement as ordered, and if you shall fail or neglect to construct, or cause same to be constructed, within the said period of time, the City of Polson will construct, or cause to be constructed, the said improvement as ordered and will assess the cost thereof against the said property in front of which the same is constructed.

City Manager

Sec. 9.04.060. Construction ordered by city; warrant for payment of costs.

- A. When any such sidewalk and curb, or either thereof, are constructed by or under the direction of the city commission, payment for the construction thereof shall be made by special warrants which shall be drawn upon a fund to be known as the "special sidewalk and curb fund," and such warrants shall be in substantially the following form:

SPECIAL SIDEWALK AND CURB
WARRANT

Polson, Montana
No. _____ 20_____ \$ _____
Polson, Montana, _____, 20_____

The City of Polson, Montana, will pay to _____ OR BEARER
HEREOF, the sum of _____ DOLLARS on account of sidewalks and curbs
constructed in said city. This Warrant is issued under the provisions of MCA 7-14-

4109 and Acts amendatory thereof and supplementary thereto, and under resolutions and ordinances of said city relating to sidewalks and curbs.

The principal and interest of this warrant are payable at the office of the City Clerk at Polson, Montana.

This warrant bears interest at the rate or rates designated by the successful bidder and authorized and accepted by the city commission from date of its registration as expressed herein until date called for its redemption by the City Clerk. The interest on this warrant is payable on the first day of January in each year, until the payment of this warrant, as expressed by the interest coupons hereto attached.

This warrant is payable from the collection of a special tax or assessment and is redeemable at the option of the City of Polson on or before the first day of January, 20_____, at any time there is money to the credit of the said Sidewalk and Curb Fund for the redemption thereof and in the manner provided for the redemption of the same. The holder of this warrant shall have no claim therefor against said City in any event except from the collection of special assessments made to defray the cost of sidewalks and curbs for which this warrant is issued, but the holder's remedy in case of nonpayment shall be confined to the enforcement of such assessments.

IT IS HEREBY CERTIFIED AND RECITED that all acts and things required to be done precedent to and in the issuance of this warrant have been properly done, approved and been performed in the manner prescribed by the laws of the State of Montana and the resolutions of the City of Polson, Montana, relating to the issuance hereof, and the interest coupons hereto attached are signed with the facsimile signatures of the Mayor and City Clerk.

THE CITY OF POLSON, MONTANA

By: _____	
Attest: _____	

_____ City Clerk	
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Registered in the office of the City Manager of the City of Polson, Montana, this _____ day of _____/_____/_____, A.D. 20_____, and redeemable at the option of the City of Polson on or before the first day of January, A.D. 20_____.

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Manager

B. Such warrants shall be signed by the mayor and city clerk, and shall bear the corporate seal of the city and shall have attached to them interest coupons, one for each year's interest to become due thereon, and shall bear the facsimile signatures of the mayor and city clerk, and shall be in substantially the following form:

Coupon No. _____ . Special Sidewalk and Curb Fund \$ _____

On January 1, 20_____, the City Clerk of Polson, Montana, will, at her office in the City of Polson, Montana, pay _____, or bearer, the sum of _____ Dollars, being interest due on said date of payment on its Special Sidewalk and Curb Fund Warrant No. _____ issued on account of sidewalks and curbs.

THE CITY OF POLSON

_____ City Clerk	_____ Mayor
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C. Such special sidewalk and curb warrants shall be issued in the denomination of \$100.00 each, or fractions thereof when necessary.

Secs. 9.04.070-9.04.199. Reserved.

ARTICLE 5. DOWNTOWN SIDEWALK ENCROACHMENT PERMIT PROGRAM

Sec. 9.05.010. Purpose and intent.

Sec. 9.05.020. Definitions.

Sec. 9.05.030. Encroachment on public right-of-way prohibited.

Sec. 9.05.040. Exception for downtown business district.

Sec. 9.05.050. Encroachments; permit required.

Sec. 9.05.060. License or approval letter required.

Sec. 9.05.070. Uses permitted under this article.

Sec. 9.05.080. Notification of name or address change.

Sec. 9.05.090. Littering and trash removal.

Sec. 9.05.100. Fees.

Sec. 9.05.110. Suspension and revocation of permits.

Sec. 9.05.120. Appeal procedure.

Sec. 9.05.130. Enforcement; penalties; designated a municipal infraction.

Secs. 9.05.140-9.05.299. Reserved.

Sec. 9.05.010. Purpose and intent.

- A. It is the intent of the city commission, in enacting the ordinance from which this article is derived, to:
1. Serve and protect the health, safety and welfare of the general public;
 2. Regulate and control private uses and encroachments occurring upon public rights of way in the downtown business district of the city by establishing distinct criteria to permit and/or approve sidewalk encroachments; and
 3. Develop a fair and equitable program that will enhance the overall appearance, ambiance and environment of the downtown business district.

Sec. 9.05.020. Definitions.

- A. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
1. "Block face" means one side of a street between two consecutive intersecting rights of ways, including alleys;
 2. "Downtown business district" means boundaries of the Central Business Zoning District (CBZD),
 3. "Commercial use" means any activity involving the sale of goods or services carried out for profit;
 4. "City manager" means the Polson city manager and includes an authorized designee or representative;
 5. "Encroachment" means any fixture or device including but not limited to a showcase, table, bench, rack, handcart, pushcart, sign, portable sign, stall, newspaper dispensers

and publication racks, seating area, fence, barrier, or partition which intrudes into or invades the public sidewalk right-of-way and by its nature is temporary, non-exclusive and mobile and does not modify the material components of the public right-of-way;

6. "Portable sign" means any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including but not limited to signs designed to be transported by means of wheels and signs converted to A- or T-frames;
7. "Public right-of-way" means any area legally open to public use, including but not limited to, and projecting vertically skyward above, public streets, sidewalks, roadways, highways, parkways, alleys, or parks as well as areas surrounding and immediately adjacent to public buildings;
8. "Public use" means any normal use of the public right-of-way as distinguished from "exclusive use" as defined under this article;
9. "Side street" means all streets within the downtown business district that run in a east-west direction.
10. "Sidewalk" means all that area legally opened to public use as a pedestrian public way between the curblin and the legal building line of the abutting property;
11. "Sidewalk cafe" means any group of tables, chairs, benches, barriers or partitions, trash containers and suitable decorative devices maintained upon any part of the public right-of-way for use by an establishment with a valid food and drink permit in the sale to the public of food, refreshments, and beverages of all kinds and is not a sidewalk vending cart;
12. "Sidewalk display" means any showcase, table, bench, rack, sign, stall, kiosk, or any other fixture or device used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling, or offering for sale any food, beverage, goods, wares, merchandise, event, or service upon a sidewalk;
13. "Sidewalk vending cart" means any handcart, pushcart, stall, or any other mobile device that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling, or offering for sale any food, beverages, goods, wares, or merchandise upon a sidewalk;
14. "Temporary" means a period of six months or less.

Sec. 9.05.030. Encroachment on public right-of-way prohibited.

Except as otherwise provided by this Code, it is unlawful to obstruct the public rights of way of the downtown business district with debris, encumbrances or encroachments of any kind that hampers or interferes with the free and safe use or passage by the public.

Sec. 9.05.040. Exception for downtown business district.

Vendors doing business in the downtown business district shall be allowed to use city sidewalk as provided in this article.

Sec. 9.05.050. Encroachments; permit required.

Upon application, the city manager may authorize by written permit, subject to conditions, to occur upon sidewalks in the downtown business district. Each permit must be renewed on an annual basis and the city manager shall have the right to refuse to renew any permits issued. All applications for non-substantial encroachments must include:

1. A completed downtown sidewalk encroachment revocable permit form including any necessary supporting materials;
3. A sketch depicting, as accurately as possible, the size and location of all requested encroachment items as well as other existing obstructions or improvements which would limit the free use of the sidewalk by pedestrians;
4. A certificate of liability insurance which names the city and (if encroachment occurs upon a state-designated primary or urban route) the state as additional insureds. The insurance must provide a minimum coverage of \$1,000,000 for each claim and \$2,000,000 for each occurrence;
5. The permit holder shall agree in writing to indemnify, defend, and hold harmless the city and (if non-substantial encroachment occurring upon a state-designated primary or urban route) the state department of transportation and their employees and agents against all claims, liability, loss, damage, or expense incurred by the city and/or state department of transportation due to any injury to or death of any person or any damage of property caused by or resulting from the activities for which the permit is granted.

Sec. 9.05.060. License or approval letter required.

Any applicant intending to sell food or beverages must provide a copy of a food purveyor's license or an approval statement issued by the Lake County Sanitarian with the application for a permit under this article.

Sec. 9.05.070. Uses permitted under this article.

It is the permittee's responsibility to place any encroachments allowed under this article in a manner which ensures safe pedestrian and vehicular travel, complies with any conditions placed upon the permit, and to immediately correct any deficiencies noted by the city manager. All items permitted pursuant to this article shall be placed not less than two feet from the curb, or not less than 18 inches from the curb when located on side streets that have no adjacent on-street parking, and leave a minimum of three (3) feet of sidewalk aisle clear and shall not interfere with vehicular sight triangles, and as necessary for safe vehicular traffic. Additionally, all encroachments permitted under this article will be built, installed, and maintained in such a manner as to ensure the safety of the public.

Permits may be issued under this article for the following uses:

1. *Benches*. Any benches must be placed flush to the corresponding building and must not project more than three feet into the sidewalk;

2. *Portable signs.* These signs must not exceed a height of five feet or a width of three feet, placed adjacent and perpendicular to the corresponding building and within four feet of the business entrance;
3. *Sidewalk displays.* With the exception of kiosks, displays must be placed flush against the building, must not exceed six feet in height, and must be within four feet of the business entrance;
4. *Kiosks.* Kiosks must not exceed seven feet in height and must be placed in a manner so as not to interfere with free flow of pedestrian and vehicular traffic;
5. *Bike racks.* Bike racks must not exceed a ten-bike capacity with five bikes per side and be placed so the parked bikes run parallel with the street;
6. *Sidewalk vending carts.* The cart must be no more than three feet wide, must be placed within 4.5 feet of the store face and may operate between 6:00 a.m. and 9:00 p.m. or until sunset, whichever occurs first. All signage must be attached to the cart and shall not exceed six feet in length. The city, at its discretion and upon request, may allow the use of a portable sign. Sidewalk vending carts will be allowed only in the CBDZ and not more than one cart will be allowed per city block face;
7. *Tables and chairs.* Tables used for the primary purpose of consuming food or beverages must be no more than four feet wide and set in a manner such that respective table and chair settings do not occupy more than five feet of total right-of-way width. Tables and chairs may be located building and/or curbside, subject to the provisions of section 9.05.130, and shall maintain at all times upon the public sidewalk a minimum three foot wide clear aisle for pedestrian movement;
8. *Hanging pots.* Pots for flowers or other miscellaneous items may be hung from the rods extending from the light poles only. The bottoms of all pots must not be lower than seven feet and shall not block street signs in any manner. No fee will be charged for a permit for hanging pots.
9. *Newspaper dispensers and publication racks.* Coin-operated newspaper dispensers and media publication racks and displays must be placed flush against the building and may not exceed four feet in height and shall be of a design quality approved by the city;
10. *Sidewalk cafe serving alcohol.*
 - a. All sidewalk cafes having an alcoholic beverage license shall be required to have the staff of the establishments owning such sidewalk cafes serve all food, alcoholic beverages and non-alcoholic beverages in the sidewalk cafe area only. Service of alcoholic beverages in all sidewalk cafes shall be limited to persons seated at tables in the sidewalk cafe site. The serving of alcohol shall be served in a clear unbreakable container and not in glass or paper products. Any person serving alcohol must have received alcohol server training;
 - b. The sidewalk cafe alcoholic beverage license issued by the state must include, as part of the licensed premises floor plan, the sidewalk cafe area, if required by the State of Montana. The use and operation of the sidewalk cafe area shall occur in accordance with the state-approved alcoholic beverage license and a copy of the license shall be kept on file with the city manager;

- c. Liability insurance required in section 9.05.080.A.2.c will cover the sidewalk cafe area;
 - d. Each sidewalk cafe serving alcoholic beverages shall be responsible for policing the area of the sidewalk cafe to be sure that customers are of legal drinking age and that alcoholic beverages are not removed from the premises;
 - e. There shall be no sale of alcohol for consumption at a sidewalk cafe after 10:00 pm until normal opening of business each day. In addition, all containers of intoxicating beverages shall be removed from the tables of the sidewalk cafe and the sidewalk cafe area by 10:00 pm;
 - f. The sidewalk cafe area must be adjacent to the licensed building and shall be enclosed, except for ingress and egress entry points, by a temporary fence approved by the building inspector. The fence shall be:
 - (1) Black or of a color that matches the adjacent building; and
 - (2) At least three feet in height.
11. *Miscellaneous items.* The building inspector may permit other items as deemed appropriate. The building inspector shall place what restrictions the city manager deems necessary to ensure the safe passage for pedestrian and vehicular traffic.

Sec. 9.05.080. Notification of name or address change.

All permittees will ensure that a current and correct name, residential address and mailing address are on file with the city manager. Should either the permittee's name, business name or permittee's address provided on the application change, the permittee must notify the city manager within five working days of such change and provide the same with the accurate information.

Sec. 9.05.090. Littering and trash removal.

- A. Permittees will keep the sidewalks, roadways and other spaces adjacent to their sites or locations clean and free of paper, peelings and refuse of any kind generated from the operation of their business.
- B. Permittees engaged in food vending will make available a receptacle for litter. The permittee will regularly empty and maintain the receptacle and mark it appropriately to provide proper notice to the public of its purpose. Upon ceasing operations for the day, permittees will ensure the area immediately adjacent to the site is thoroughly clean and free of debris.

Sec. 9.05.100. Fees.

- A. A \$50.00 annual fee (January–December), without proration, shall be charged for encroachments which shall be paid upon application or renewal of a downtown sidewalk encroachment revocable permit.

Sec. 9.05.110. Suspension and revocation of permits.

- A. The city manager may suspend or revoke any permit for encroachment issued under section 9.05.050 for any of the following reasons:
 - 1. Fraud, misrepresentation or a knowingly false statement contained in the application for the permit;
 - 2. Conducting any activity in any manner contrary to the conditions of the permit;
 - 3. Conducting any permit activity in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of abutting property owners;
 - 4. Failure to regularly empty and maintain a litter receptacle;
 - 5. Cancellation of the Lake County Health Department's authorization for a food or beverage vending unit; or
 - 6. Failure to comply with any provision in this article or any condition of approval required by the city manager.
- B. Should the city manager decide to exercise the rights given under this article, notice may be delivered in person or mailed by certified letter to the address provided on the application. The city manager shall state all reasons for the decision to revoke or suspend the permit and the length of the suspension, if any;
- C. The permittee will have three days from the date of receipt of the letter to file a written response to the manager's letter or to remove all items from the city's sidewalk. Failure to respond to the manager's letter or to remove the items from the city's sidewalk will be cause for the city manager to order the property removed by the police. The property shall be considered evidence and will not be returned until the resolution of any citation issued under this Code;
- D. Should the permittee fail to pick up the letter for a period of five working days after it has been mailed, the city manager may then direct the police to remove the permittee's property from the city's sidewalks;
- E. Should the city manager determine the permittee's property presents a safety hazard or requires immediate remedy, including but limited to sidewalk maintenance, then in that event, the city manager may order the property removed immediately by the police.

Sec. 9.05.120. Appeal procedure.

Any permittee will have the right to appeal the denial, suspension or revocation of any permit issued under this article 5 to the city commission. The permittee will make the appeal within ten days after receiving notice of the denial, suspension or revocation by filing a written notice with the city manager.

Sec. 9.05.130. Enforcement; penalties; designated a municipal infraction.

- A. In addition to suspension or revocation under section 9.05.150, a violation of this article is punishable in accordance with the general provisions of these ordinances. Each day of violation shall constitute a separate violation.
- B. The court may also order a permit revoked in addition to any other penalty imposed by the court.

Secs. 9.05.140-9.05.299. Reserved.

ARTICLE 6. SNOW REMOVAL FROM SIDEWALKS

Sec. 9.06.010. Definitions.

Sec. 9.06.020. Snow and ice to be removed from sidewalks.

Sec. 9.06.030. Depositing of snow and ice restricted.

Sec. 9.06.040. Violations; civil penalty and collection.

Sec. 9.06.050. Appeals.

Secs. 9.06.060-9.06.199. Reserved.

Sec. 9.06.010. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Lot" means a parcel of land occupied or intended for occupancy by one main building together with its accessory buildings and which may include more than one platted lot.
2. "Front lot line" means the front boundary line of a lot bordering on the street and, in the case of a corner lot, may be either frontage.
3. "Rear lot line" means the rear boundary line or lines of a lot located opposite its front lot line.
4. "Street" or "highway" means the entire width between the exterior boundary lines of every publicly maintained way or other public or private place adapted and fitted for the use of the public for purposes of vehicular travel.
5. "Arterial street" means any U.S. or state numbered route, controlled access highway or other major radial or circumferential street or highway designated by the city as part of its major arterial system.
6. "Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel or parking, exclusive of the berm or shoulder.
7. "Sidewalk" means that portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property line paved and intended for the use of pedestrians.
8. "Business day" is any day not a Sunday or a national holiday.
9. "Downtown business district" includes all lots located within the Polson tax increment finance district (TIF District) excepting however, those lots which are occupied solely by one or more dwelling units.
10. "Business hours" are the hours between 9:00 a.m. and 5:00 p.m. on any business day.

Sec. 9.06.020. Snow and ice to be removed from sidewalks.

Every owner of land within the city fronting or abutting on a paved sidewalk shall remove and clear away, or cause to be removed and cleared away, any snow and ice from that portion of the sidewalk in front of or abutting the building or lot of land.

1. A double frontage lot that has a sidewalk which fronts on or abuts an arterial street as well as a sidewalk which fronts on or abuts another street on the direct opposite lot line shall be required to remove snow on the arterial street sidewalk.
2. Except as provided herein and regardless of the manner in which the snow or ice is deposited on sidewalks, all snow and ice shall be removed from sidewalks in all business districts within the city by 9:00 a.m. of the next business day, by 12:00 noon of the next non-business day or within four business hours after any snow or ice deposit, whichever period is shorter.
3. Except as provided herein and regardless of the manner in which the snow and ice are deposited, all snow and ice shall be removed from all other sidewalks within the city within the first 24 hours after any snow or ice deposit.

However, in the event the city manager or his designated representative determines the snow and ice on a sidewalk cannot be reasonably removed, the city manager or his designated representative may require the use of sand or other suitable substance to make pedestrian travel reasonably safe. This request will be complied with within the time set forth in subsection A of this section. In that event, however, the sidewalk will be thoroughly cleaned as soon as the weather permits.

Sec. 9.06.030. Depositing of snow and ice restricted.

No person shall deposit or cause to be deposited any accumulation of snow or ice on or against a fire hydrant or on any sidewalk, roadway, curb or gutter, any loading and unloading area of a public transportation system or any area designated for use by emergency vehicles for access.

Sec. 9.06.040. Violations; civil penalty and collection.

- A. Should any person fail to clear away or treat with abrasives and subsequently clear away any snow and ice from any sidewalk as required, the city manager may, as soon as practicable after such failure, have the sidewalks cleared.
- B. The city manager or his designated representative shall record the name of the property owner, the legal description and street address of the lot, the exact dates and costs of all snow removal done in accordance with this section including but not limited to the costs of private contractors hired for such purpose, and administrative costs.
- C. Each person who fails to clear the sidewalk as required herein and thus requires the city to perform the work in accordance with this section shall be liable to the city for the cost of such work plus a civil penalty of \$30.00 or 20 percent of such costs, whichever is greater.
- D. The city manager or a designated representative shall give the property owner written notice of the amount owed to the city as soon as practicable following the completion of the work. The payment of such amount may be enforced through suit for collection or by levying an assessment on the premises or both.
- E. In the event of assessment, the city commission shall annually adopt a resolution levying an assessment and tax against each lot or parcel of land fronting or abutting on the sidewalks ordered cleared by the city manager in accordance with the provisions of this article. All assessments levied shall be charged simple interest at the rate of ten

percent per year from the date the work is performed until the assessment is fully paid and satisfied.

Sec. 9.06.050. Appeals.

The city manager shall develop a program allowing all landowners assessed in accordance with this article to appeal the assessment. Property owners wishing to appeal the assessment will submit their appeal to the city manager or a designated representative within 30 days of the date of the first notice required in section 9.06.040.D or five working days prior to the city commission meeting at which the assessment is being considered, whichever is sooner.

Secs. 9.06.160-9.06.199. Reserved.

ARTICLE 7. ADVERTISEMENT SPACE ON MUNICIPAL PROPERTY

Sec. 9.07.010. Legislative findings.

Sec. 9.07.020. Application for individual advertisements.

Sec. 9.07.030. Advertising programs; contract authorized.

Sec. 9.07.040. Advertising standards.

Sec. 9.07.050. Exemption from Uniform Development Code sign provisions.

Secs. 9.07.060-9.07.199. Reserved.

Sec. 9.07.010. Legislative findings.

A. The city commission finds that:

1. The selling of advertisement space on municipal vehicles, equipment, solid waste containers, and other property will bring in needed revenue and will assist in relieving the tax burden of the city's citizens.
2. The city has and will continue to have vehicles, equipment, solid waste containers, and other property suitable for advertisement space.
3. It is appropriate to sell advertisement space from time to time on specific municipal property.
4. The vehicles, equipment, solid waste containers, and other property to be used for advertisement space are not public forums and therefore all advertisement will be commercial in nature.
5. Limiting advertisement only to certain commercial advertisement:
 - a. Maintains a position of neutrality on political and religious issues;
 - b. Protects municipal property from vandalism and destruction;
 - c. Prevents a reduction of income that occurs when political and religious messages are utilized; and
 - d. Prevents the violation of the establishment clause.
6. Entering into agreements to manage advertising programs on certain city property is in the best interest of the city as management of an advertising program by a contracted party will reduce the city's administrative overhead in managing an advertising program.

Sec. 9.07.020. Application for individual advertisements.

- A. Any person seeking to commercially advertise on city property other than under section 9.07.030 must submit an application with the proposed advertisement to the city manager for approval to ensure compliance with this chapter, and must enter into an agreement acceptable to the city. The term of the agreement shall not exceed 180 days.

- B. The application must contain a full advertising graphic design in sufficient detail to determine content and final general appearance, including the scaled location of the advertisement on the subject property.
- C. The city manager shall reject an application:
 - 1. That is incomplete;
 - 2. That does not comply with the standards set forth in section 9.07.040; or
 - 3. When there are no appropriate advertising spaces available.

Sec. 9.07.030. Advertising programs; contract authorized.

The city commission may authorize the city manager to enter into a contract for a term not to exceed three years for the purpose of administering a program to advertise on city property. Each advertisement installed under an adopted program must comply with the standards in section 9.07.040 and this Code. Each advertisement must be reviewed and approved by a city employee designated in the contract.

Sec. 9.07.040. Advertising standards.

- A. The subject matter of all advertisement shall be limited to speech that proposes a commercial transaction.
- B. Prohibited advertising copy and graphics.
 - 1. Advertisement that is unlawful or relates to illegal activity.
 - 2. Advertisement that is obscene or would be in violation of MCA 45-8-206 (public display or dissemination of obscene material to minors).
 - 3. Advertising of alcohol or tobacco products.
 - 4. Advertising of commercial advertisements by political candidates for public office and advertisements concerning ballot issues.
 - 5. Advertising of contraception products or hygiene products of an intimate personal nature.
 - 6. Advertising of products or services with sexual overtones such as escort services, or establishments featuring X-rated or pornographic movies or products.
 - 7. Advertisement that depicts violence and/or anti-social behavior.
 - 8. Advertisement that is false, misleading, or deceptive.
 - 9. Advertisement using threatening, obscene, profane, vulgar, or abusive language.
 - 10. Advertisement that holds up individuals or groups of people to public ridicule, derision, or embarrassment.
 - 11. Advertisement that supports or opposes a candidate, issue, or cause, or which advocates or opposes a religion, denomination, religious creed, tenet, or belief.
 - 12. Advertisements may not be placed on park or trail benches or picnic tables that currently contain "In Memoriam" plaques.
 - 13. No advertisements shall be placed on the exterior of any city-owned structures.

14. Advertisements that portray or depict any activities, products, or services related to medical marijuana.
- C. The applicant and the business or person represented by the applicant must be in compliance with all city ordinances and laws.

Sec. 9.07.050. Exemption from sign ordinance.

Any advertisement installed under this article is exempt from complying with the sign provisions of these ordinances.

Secs. 9.07.060-9.07.199. Reserved.

ARTICLE 8. PARADES, SPECIAL EVENTS AND PUBLIC ASSEMBLIES

- Sec. 9.08.010. Purpose and intent.
- Sec. 9.08.020. Scope; authority.
- Sec. 9.08.030. Definitions.
- Sec. 9.08.040. Administration; permit required.
- Sec. 9.08.050. Exceptions.
- Sec. 9.08.060. Parades and public assemblies open to public/private for-profit activities.
- Sec. 9.08.070. Requirements for insurance, indemnification, bonding or other security.
- Sec. 9.08.080. Application.
- Sec. 9.08.090. Traffic control plan/city equipment.
- Sec. 9.08.100. Temporary closures for residential block parties.
- Sec. 9.08.110. Fees/cost recovery.
- Sec. 9.08.120. Police protection; public services and other expenses.
- Sec. 9.08.130. Public hearing.
- Sec. 9.08.140. Standards for issuance.
- Sec. 9.08.150. Action on application.
- Sec. 9.08.160. Alternative permit.
- Sec. 9.08.170. Nondiscrimination.
- Sec. 9.08.180. Notice of decision on application.
- Sec. 9.08.190. Appeal procedure.
- Sec. 9.08.200. Notice to city and other officials.
- Sec. 9.08.210. Duties of permittee.
- Sec. 9.08.220. Prohibitions.
- Sec. 9.08.230. Public conduct during parades or public assemblies.
- Sec. 9.08.240. Revocation of permit.
- Sec. 9.08.250. Enforcement.
- Sec. 9.08.260. Judicial review.
- Secs. 9.08.270-9.07.399. Reserved.

Sec. 9.08.010. Purpose and intent.

The city recognizes and supports the public's right of assembly and free speech and use of designated public facilities for such purposes. At the same time, the city has an important and compelling governmental interest in protecting property, public safety, health, and welfare, and controlling the use of streets and other public facilities and venues. This article seeks to accommodate public rights of speech and assembly consistent with that governmental interest by establishing procedures, terms, and conditions for use of public areas and facilities for such purposes. A second purpose of this article is to facilitate and manage the manner in which public facilities that are not otherwise required for governmental operations may be made available for use on a temporary basis for non-governmental operations.

Sec. 9.08.020. Scope; authority.

This article applies to all public parades and assemblies that may be expected to affect the public, the property or services of the city, or otherwise require an expenditure of time and expense or create the potential for liability or public disturbance or other substantial concern. This article also applies to requests for the use of public facilities for purposes other than governmental operations.

Sec. 9.08.030. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Aggrieved person" means a person who can demonstrate a specific, personal and legal interest in the final decision of an application for a permit issued under this article, as distinguished from a general interest such as is the concern of all members of the community, and which interest would be specifically and personally prejudiced by the decision or benefited by its reversal.
2. "Trained traffic control person" means a person who has completed a course or program of training for regulating the flow of traffic upon a street, which has been approved by the chief of police, the state department of transportation, or the city streets superintendent.
3. "Parade" means any special event, march, demonstration, procession (excluding funeral processions) or motorcade consisting of persons, animals, bicycles, runners/joggers/walkers or vehicles or a combination thereof upon the streets, or other public facilities within the city with an intent of attracting public attention that affects or may reasonably be expected to affect the normal flow or regulation of traffic upon the streets, or other public facilities.
4. "Permit" means permission for assembly, parade, or use of public facilities issued pursuant to this article.
5. "Public assembly" means any special event, meeting, march, demonstration, picket line, rally or gathering of 75 or more persons for a common purpose as a result of prior planning that affects or may reasonably be expected to affect the normal flow or regulation of pedestrian or vehicular traffic upon the streets or other public facility, other than a park or recreational building or facility.
6. "Public facility" means a building, structure, place or other location or area which a person may seek to utilize for purposes other than the normal and usual governmental operations of the city, but excludes a public park and recreational facilities that are provided for under separate ordinance.
7. "Sidewalk" means any area or way set aside or open to the general public for purposes of pedestrian traffic, whether or not it is paved.
8. "Street" means any place or way set aside or open to the general public for purposes of vehicular traffic, including any berm or shoulder parkway, right-of-way, or median strip thereof.

Sec. 9.08.040. Administration; permit required.

This article shall be administered by the city manager. Except as provided in this article, no person shall engage in or conduct any parade or public assembly or use any public facility, including public rights-of-way, for purposes other than governmental operations unless a person has a current and valid permit therefor issued in accordance with this article.

Sec. 9.08.050. Exceptions.

This article shall not apply to the following:

1. Funeral processions.
2. Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities.
3. A governmental agency acting within the scope of its function.
4. Spontaneous events resulting in a public assembly occasioned by news or affairs coming into public knowledge within three days of such public assembly, provided that the organizer thereof gives written notice to the city at least 24 hours prior to such public assembly or other such notice as may be reasonable under the circumstances.
5. The reserved use of parks or other recreational buildings and facilities. Parks and recreational buildings and facilities are regulated under chapter 15.

Exceptions and waivers from requirements for payment of fees and expenses, proof of insurance, or other security may be approved solely in accordance with applicable sections of this article.

Sec. 9.08.060. Parades and public assemblies open to public/private for-profit activities.

- A. Public assembly and parade events must be free and open to the general public. An organizer, permittee, or participant in an event authorized under this article shall not restrict the general public from access to sidewalks, businesses and residences.
- B. Parades or public assembly permits that seek to utilize public facilities where the primary purpose of the event is to advertise or promote any products, goods, or services, or an event that is primarily for private profit-making purposes may be approved only if:
 1. The public facility requested is not otherwise required for use for public purposes.
 2. All costs to the city, direct and indirect, are reimbursed in full by the sponsor of the event.
 3. The application satisfies all requirements of this article.
- C. The only signs permissible on city property during a parade or public assembly conducted primarily for private for-profit purposes are signs which identify organizations or sponsors furnishing or sponsoring exhibits or structures used in a parade or assembly.
- D. Participant fees may be charged, if so noted on the application and approved by the city manager.

Sec. 9.08.070. Requirements for insurance, indemnification, bonding or other security.

- A. To avoid interference with protected rights of speech and assembly, any requirement imposed for surety for performance (including but not limited to insurance, indemnification, bonding, or monetary deposits) shall be based upon needs directly associated with the event and not on the basis of possible disruption of the event by

protestors or other persons who might be opposed to the speech or assembly. Such restriction, however, shall not apply where the city manager determines that the event is being scheduled so as to unduly and unnecessarily create a potential for counter-protest or disruption or interference with public health, safety, welfare, or order.

- B. A permittee under this article shall obtain commercial general liability insurance covering the permittee and/or the permittee's organization for all activities related to the parade and/or public assembly, including but not limited to setup, the public assembly or parade itself, and all cleanup and takedown activities. The insurance policy shall contain no exceptions or exclusions for activities conducted under or related to the permitted activities. The permittee shall name the city, its officers, and employees as additional non participatory insureds on a primary non-contributory basis. The additional insured coverage shall be in a form acceptable to the city. To the extent reasonably possible, such additional insured coverage shall be in the minimum amounts of \$750,000.00 per claimant and \$1,500,000.00 per occurrence.
- C. The insurance requirements of this section are in addition to and separate from any other obligations contained in this section or article or in a permit issued under this article.
- D. Any liability insurance requirements for residential block parties shall be governed by section 9.08.100, pertaining to residential block parties.
- E. Applicants for a permit under this article shall agree in writing to defend, hold the city and its employees and officials harmless and indemnify the city, its employees and officials for any and all claims, lawsuits or liability including attorneys' fees and costs allegedly arising out of loss, damage or injury to a person or a person's property occurring during the course of, in preparation of, or in any way pertaining to the parade or public assembly which are caused by the conduct of employees or agents of the permit holder.
- F. The city manager may grant a waiver to the requirements of this section for city-sponsored events or when the city manager determines the parade or public assembly does not present a substantial or significant public liability or property damage exposure for the city, its officers, agents and employees. The city manager shall consider the applicant's proven financial inability to obtain the required coverage. When the city manager considers requests for waivers, the city manager shall base the decision on the factual circumstances presented by the applicant and decide the specific request on its merits.

Sec. 9.08.080. Application.

- A. A person seeking a parade or public assembly permit shall file an application with the city manager on forms provided by the city, and the application shall be signed by the applicant.
- B. For single, nonrecurring parades or public assemblies, an application for a permit shall be filed with the city manager at least 15 working days and not more than 180 days before the parade or public assembly is proposed to commence. The city manager may waive the minimum filing period and accept an application filed within a shorter period if, after due consideration of the date, time, place, and nature of the parade or public assembly, the anticipated number of participants, and the city services required in connection with the event, the city manager determines that the waiver will not present a hazard to public safety, or if the required timeframe would substantially

burden protected rights, including speech and assembly, as to matters of public concern, and the expedited review process would allow reasonable review to address substantial matters of public safety, welfare, and convenience.

- C. For parades or public assemblies held on a regular or recurring basis at the same location, an application for a permit covering all such parades or assemblies during that calendar year may receive approval of all recurring events within that calendar year on one application, but a separate application fee for each occurrence must be paid. These applications shall be filed with the city manager at least 60 days and not more than 180 days before the date and time at which the first such parade or public assembly is proposed to commence. The city manager may waive the minimum 60-day period after due consideration of the factors specified in subsection B of this section.
- D. The application for a parade or public assembly permit shall be made on a form provided by the city and shall include all information deemed relevant to the requested event.
- E. If an application for a permit is denied, the city assumes no liability for expenses incurred by the applicant.

Sec. 9.08.090. Traffic control plan/city equipment.

- A. Applications for parades, public assemblies, residential block parties, fun runs and other similar events that include a street closure must provide a complete traffic control plan that complies with the Manual on Uniform Traffic Control Devices. Permittees of events requiring a traffic control plan must ensure requirements of the traffic control and barricade plan are met. Automobiles, trucks or other large, heavy objects are not acceptable barricades. Barricades in place at night must have lights. This plan shall include a map or sketch of the route, identify individuals who will be present at intersections, including their affiliation and proof of traffic control certification, if applicable, types of personal safety equipment, and types of barricades. If a street is not closed, but traffic will be stopped for participants to cross, trained traffic control persons must be used.
- B. The requirement in subsection A of this section may be waived by the city manager if it is determined that the closure can safely be done by the organizer using approved barricades/signage. At the discretion of the city manager, barricades and signage may be obtained from the city streets division only upon submittal of a deposit in an amount to be established by the city manager. The applicant shall pay for any signage and barricades that are damaged or not returned to the city streets division. If signage and barricades are not available from the city streets division, the permittee must obtain them from a private sign company.
- C. The requirement in subsection A of this section may be waived by the city manager if it is determined the closure will be done by the city streets division, with or without a fee for the service.

Sec. 9.08.100. Temporary closures for residential block parties.

Residential block parties may be permitted by the city manager pursuant to the criteria in section 9.08.140 at residential locations not involving closure of any arterial or collector streets and only during the hours between 8:00 a.m. and 9:00 p.m. subject to the following conditions:

1. The applicant shall contact in writing all abutting or adjacent property owners and residents (if a property is not owner-occupied) within the area to be closed as well as the property owners on the corner lots immediately across the intersection on the opposite side of the street closure. The applicant shall provide written documentation to the city manager at the time of application indicating each of the above-described property owners/residents consent to or oppose the application.
2. The applicant must have an approved traffic control plan in accordance with section 9.08.090 and shall be solely physically and financially responsible for obtaining, placing and removing any required barricades or traffic control devices.
3. The applicant to the extent reasonably possible shall provide liability insurance protecting them as well as naming the city, its officers and employees, as additional insureds.
4. The applicant and participants shall comply with any conditions imposed on the permit.
5. Applicants for a permit under this article shall agree in writing to defend, hold the city and its employees and officials harmless and indemnify the city pursuant to section 9.08.070.E.

Sec. 9.08.110. Fees/cost recovery.

- A. A nonrefundable fee shall be paid to the city at the time of application to cover administrative costs of processing permits. All fees under this article shall be set by resolution of the commission. If the city manager requires a deposit for the parade or public assembly the city manager shall establish standards for return and forfeit.
- B. If the application is for the use of any city property, or if any city services shall be required for the parade or public assembly, the applicant shall pay, prior to the issuance of a permit, the costs for those services in accordance with a schedule of service costs approved by the commission by resolution, or assessed by the city manager as authorized under this article.
- C. If a permittee fails to pay costs or take actions required under this article, the city, after requesting the permittee for payment, may draw upon any deposit provided under subsection A of this section or may seek to recover such costs from the permittee or other responsible person by appropriate legal action. If the city prevails in any such action for recovery, it shall be entitled to reimbursement of any costs incurred in seeking such recovery, including court costs and attorneys' fees. Cost recovery from permittees and participants shall be focused upon the conduct of the permittees and authorized participants and not on conduct of observers or others over whom permittee cannot reasonably be expected to exercise control.

Sec. 9.08.120. Police protection; public services and other expenses.

A. *Police protection.*

1. If possible, without disruption of ordinary police services or compromise of public safety and welfare, regularly scheduled on-duty police personnel shall police the event.
2. The city manager, with advice from the chief of police, shall determine whether and to what extent additional police protection is reasonably necessary for the

parade or public assembly for traffic control and public safety and welfare, including public convenience. The city manager shall base a decision regarding required police protection on relevant criteria including, but not limited to, the size, location, duration, time and date of the event, the expected sale or service of alcoholic beverages, the number of streets and intersections blocked, and the need to detour or preempt citizen travel and use of the streets and sidewalks.

3. The speech content of the event shall not be a factor in determining the amount of police protection necessary, except when the applicant's speech is determined to have reasonable potential to cause, or will have the result of causing, public alarm, disruption, falsehood, or which will constitute any form of expression that is not protected under the laws or constitution of Montana or the United States.
 4. If additional police protection for the public assembly is deemed necessary by the city manager, the city manager shall so inform the applicant for the permit. The applicant then shall have the duty to secure the police protection deemed necessary by the city manager at the sole expense of the applicant.
- B. *Public services.* The city manager shall determine if the applicant shall be required to pay for or provide additional public services-related actions such as lighting, refuse receptacles and pickup, traffic control signs, devices or personnel.
- C. *Other expenses.* In circumstances where the event itself may be expected to cause the city to incur additional, extraordinary expenses, the city manager shall identify such expenses and the basis for determining them to be extraordinary. Such expenses may be imposed upon the applicant as a condition of approval of the permit.
- D. *Exception.* Persons engaging in parades or public assemblies conducted for the sole purpose of public issue speech protected under the First Amendment are not required to pay for any police protection or public services or other expenses provided by the city.

Sec. 9.08.130. Public hearing.

At any time during consideration of an application, the city manager may determine it is necessary to conduct a public hearing to the extent possible on the application to determine the nature of public concerns with the proposed event and whether such concerns should require denial of the application or imposition of conditions. The public hearing shall be limited to concerns that are unrelated to content of speech or purposes of the assembly or event except to the extent that concerns address matters such as those specified as appropriate for consideration in this article.

A public hearing, if held, shall be scheduled to allow action on the application within the timeframes established under this article. If a hearing cannot be scheduled within the timeframes established by this article, the city manager may suspend such timeframes only for the time necessary to allow for scheduling, noticing, and conducting of a public hearing. The city manager shall provide notice of the hearing to the applicant and the public by normal posting/publication requirements and such additional notice to potentially affected persons as is reasonably determined to be appropriate.

Sec. 9.08.140. Standards for issuance.

Each application shall be reviewed on a case-by-case basis. This article seeks to impose reasonable time, place and manner controls in an appropriate and limited manner upon events and facility uses for which permits are required. This article shall be administered in a manner that seeks to allow for expression, assembly, and the exercise of religious rights in accordance with applicable constitutional and statutory limits and controls.

1. The city manager shall issue a permit, subject to any conditions deemed necessary and reasonable, as provided for herein when, from consideration of the application and such other information as may otherwise be obtained, the city manager finds:
 - a. The application is complete and sets forth accurately and in sufficient detail the information required for consideration;
 - b. The conduct of the parade or public assembly will not unduly inconvenience either the public in using public areas normally open for general public use or the city in the conduct of governmental operations;
 - c. The conduct of the parade or public assembly will not substantially interrupt the safe and orderly movement of other pedestrian or vehicular traffic in the vicinity of its route or location;
 - d. The possibility of the event causing any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, pursuant to chapter 16, article 6;
 - e. The conduct of the parade or public assembly will not require the diversion of so great a number of city police officers to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection of the city;
 - f. The concentration of persons, animals, and vehicles at public assembly points of the parade or public assembly will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such public assembly areas;
 - g. The conduct of the parade or public assembly is not reasonably likely to cause injury to persons or property;
 - h. The parade or public assembly is scheduled to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route;
 - i. Adequate sanitation and other required health facilities are or will be made available in or adjacent to any public assembly areas;
 - j. There are sufficient parking places near the site of the parade or public assembly to accommodate the number of vehicles reasonably expected;
 - k. The applicant has secured the police protection, or otherwise arranged for event security if required pursuant to section 9.08.120
 - l. The applicant has paid or provided for payment of any expenses or costs as may be required under the provisions of this article;
 - m. Except as the city manager may determine pursuant to section 9.08.060, such parade or public assembly is not for the primary purpose of advertising any product, goods, or event that is primarily for private profit, and the parade or public assembly itself is not primarily for profit. The prohibition against advertising any

product, goods or event shall not apply to the signs identifying organizations or sponsors furnishing or sponsoring exhibits or structures used in the parade;

- n. No parade or public assembly permit application for the same time and general location is already granted or has been received and will be granted;
 - o. A parade or public assembly permit application for the same time but for a different location is already granted or has been received and will be granted, and the police resources or other public services required for that prior parade or public assembly are so great that, in combination with the subsequent proposed application, the resulting deployment of police or other public services would have an immediate and adverse effect upon the welfare and safety of persons and property;
 - p. The conduct of a past parade or public assembly for the same purpose or by the same organizer/organization was acceptable;
 - q. The event has no significant financial impact on city resources for events scheduled on holidays and weekends;
 - r. The number of hours a street is requested to be closed will not significantly affect vehicular and pedestrian access to commercial and residential properties;
 - s. A new event that requests the closure of a collector and/or arterial street(s) would benefit more than just a limited number of individuals;
 - t. A street closure is necessary for the safety of the event participants, rather than just for the convenience of the event; and
 - u. For events which seek the closure of any portion of Main Street, the applicant must demonstrate a nexus between the event and the need for use of Main Street as opposed to use of another location.
- 2. An event may be limited as to the number of participants in the interest of safety, health, public order, and adequacy of facilities and security by order of the city manager, chief of police or fire chief.
 - 3. No permit shall be granted that allows for the erection or placement of any structure, whether permanent or temporary, on a city street, sidewalk, or right-of-way unless advance approval for the erection or placement of the structure is obtained from the city manager.

Sec. 9.08.150. Action on application.

- A. Within five working days upon receiving an application, the city manager shall determine if the application is complete or if any additional preliminary information is required. An incomplete or insufficient application suspends the review times provided in this section until the information requested is provided to the city. If additional information is required, the city manager shall so inform the applicant, and the applicant shall provide such required information prior to further consideration of the application. The requirement to supplement the application at this stage does not prevent the city from requiring additional information during its review and action on the application.
- B. After accepting an application as complete, the city manager shall forward it for review and recommendation to the chief of police, streets division, any other municipal

employee, official, or board deemed appropriate. The application shall also be referred to the state department of transportation and the county road superintendent if the event could affect the state or county transportation system. Applications for events in the downtown area shall also be forwarded to the Polson Chamber of Commerce. Such review and recommendation shall occur within five business days unless that period is extended by the city manager.

- C. After receiving comments and recommendations from the reviewing agencies and after considering such other information as deemed appropriate, the city manager may require the applicant to submit additional information or respond to the reviews and recommendations or impose such conditions as are appropriate under the circumstances.
- D. If the city manager determines an event has the potential of adversely affecting the public or a substantial number of persons, the city manager may determine that a public hearing is required, in which case section 9.08.130 shall apply. In such a case, the timelines for review as established in this section shall be suspended until completion of the public hearing.
- E. Upon completion of the foregoing, the city manager shall act on the application. The city manager may approve, amend, approve with conditions or deny the application. For any action other than approval as submitted, the city manager shall include a brief summary of the reasons for the decision.
- F. Unless otherwise provided in this article or agreed to by the applicant, the city manager shall act on an application within 15 working days after determining that the application is complete.

Sec. 9.08.160. Alternative permit.

The city manager, in denying an application for a parade or public assembly permit, may authorize the conduct of the parade or public assembly at a date, time, location, or route different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within five days after notice of the action of the city manager, file a written notice of acceptance with the city manager.

An alternate parade or public assembly permit shall conform to the requirements of, and shall have the effect of, a parade or public assembly permit issued under this article.

Sec. 9.08.170. Nondiscrimination.

The city manager shall uniformly consider each application upon its merits and shall not discriminate in granting or denying permits under this article based upon political, religious, ethnic, race, disability, sexual orientation or gender-related grounds or other criteria that would constitute a violation of state or federal law.

To achieve the purposes of this article without undue interference with protected rights of speech and assembly, decisions to issue, deny, or conditionally approve permits shall not be based on the content of a message associated with the event absent a compelling governmental interest. Notwithstanding that general standard, protections otherwise applicable to speech and assembly are limited and may not extend to speech or assembly that is intended to or has the result of causing public alarm, disruption, falsehood, or other form of expression that is not protected under the laws or constitution of Montana or the United States.

Sec. 9.08.180. Notice of decision on application.

The city manager shall act promptly upon a timely filed application for a parade or public assembly permit, but in no event shall grant or deny a permit less than 48 hours prior to the event. If the city manager disapproves, approves with conditions, or otherwise modifies the application, the city manager shall notify the applicant of the decision either by personal delivery or regular or electronic mail at least 48 hours prior to the event and state the reasons for such action.

Sec. 9.08.190. Appeal procedure.

An aggrieved person shall have the right to appeal the city manager's decision on a parade or public assembly permit to the commission. Prior to filing of an appeal with the commission, the appellant shall, within five business days of the city manager's decision, request the city manager reconsider the decision. The city manager shall have five days to issue a decision on the request to reconsider.

An aggrieved person may, only after complying with subsection A of this section, file a written appeal with the commission through the city clerk with a copy to the city manager not later than five days after the city manager's decision on the request for reconsideration. The appeal shall state with specificity the grounds for the appeal.

1. The commission shall hear the appeal at the next regularly scheduled meeting following the accepted notice of appeal, provided that the receipt of the notice is received prior to the deadline for submission of new agenda items.
 - a. The appeal hearing shall be limited to the grounds stated in the appeal unless the commission for good cause determines to hear other issues or concerns.
 - b. The appellant, applicant (if not the appellant), the city manager and other persons directly affected may speak or submit evidence at the hearing. Public comment will be accepted.
 - c. The commission shall make a determination on the appeal at the meeting, unless the applicant agrees to a continuance. The city clerk shall issue the commission's decision in writing to the applicant either by personal delivery, or regular or electronic mail.

Sec. 9.08.200. Notice to city and other officials.

Immediately upon issuance of a parade or public assembly permit, the city manager shall send a copy thereof to the following:

1. The mayor;
2. The city attorney;
3. The fire chief;
4. The city manager of public works;
5. The chief of police; and
6. Any other entity determined by the city manager to be affected by the permit.

Sec. 9.08.210. Duties of permittee.

- A. A permittee hereunder shall comply with all requirements of this article, permit directions and conditions and with all applicable laws and ordinances in effect at the time of the event.
- B. The parade or public assembly chair or other person heading such activity shall carry the parade or public assembly permit upon the chair's person during the conduct of the parade or public assembly.
- C. The permittee or parade or public assembly chair or other person heading such activity shall notify all parade or public assembly participants of the conditions of this article.

Sec. 9.08.220. Prohibitions.

In addition to any other prohibitions set forth in this article, the following prohibitions shall apply to all permits for parades and public assemblies:

- 1. It is unlawful for any person to stage, present, or conduct any parade or public assembly for which a permit is required without first having obtained a permit as herein provided.
- 2. It is unlawful for any person to participate in a parade or public assembly for which a permit is required if the person knows a permit has not been granted.
- 3. It is unlawful for any person in charge of, or responsible for the conduct of, a duly licensed parade or public assembly to knowingly fail to comply with any condition of the permit.
- 4. It is unlawful for any person to engage in any parade or public assembly activity that would constitute a substantial hazard to the public safety or that would materially interfere with or endanger the public peace or rights of residents to the quiet and peaceful enjoyment of their property.
- 5. It is unlawful for any person to carry any sign, poster, plaque, or notice, unless such sign, poster, plaque, or notice is constructed or made of a cloth, paper, or cardboard material.
- 6. It is unlawful for any person participating in a parade or public assembly to utilize sound amplification equipment at decibel levels that exceed those limits imposed by this Code.
- 7. It is unlawful for any person to ride, drive, or cause to be ridden or driven any animal or any animal-drawn vehicle upon any public street, unless specifically authorized by the permit.
- 8. It is unlawful for any person in a parade or public assembly to deviate from the approved parade route.
- 9. No parade participant shall throw, cast, or drop candy, trinkets, or any other articles from a moving vehicle. This provision does not prohibit a parade participant from providing candy or other articles directly to the spectators, provided the participant is walking.
- 10. It is unlawful for any person to engage in public drinking, public display, or exhibition of open alcoholic beverages (open container) during parades and public assemblies unless an open container waiver has been granted pursuant to these ordinances.

Sec. 9.08.230. Public conduct during parades or public assemblies.

- A. No person shall unreasonably hamper, obstruct or impede, or interfere with any parade or public assembly or with any person, vehicle or animal participating or used in a parade or public assembly.
- B. No driver of a vehicle shall drive between the vehicles or persons comprising a parade or public assembly when such vehicles or persons are in motion and are conspicuously designated as a parade or public assembly.
- C. No person shall advance toward or go between the vehicles comprising a parade or public assembly when such vehicles are in motion and are conspicuously designated as a parade or public assembly.
- D. The city manager shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street constituting a part of the route of a parade or public assembly. The city manager may require the applicant to post signs to that effect, and, if so, it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street that was not posted in accordance with this section.

Sec. 9.08.240. Revocation of permit.

The city manager, the chief of police, and the fire chief shall each have the independent authority to revoke or suspend a parade or public assembly permit instantly:

1. Upon a violation of the conditions imposed in the permit;
2. Upon violation of this article; or
3. When a public emergency arises where the municipal resources required for that emergency are so great that deployment of municipal personnel, equipment or services for the parade or public assembly would have an immediate and adverse effect upon the welfare and safety of persons or property.

Such revocation shall take effect immediately, and the city manager, chief of police or fire chief shall promptly notify the permittee of revocation. After revocation, the permittee may not conduct the event, or if the event has commenced, shall immediately cause the event to be terminated in a safe, proper manner.

Sec. 9.08.250. Enforcement.

This article may be enforced by the city manager, the fire chief, or the police chief. In addition, this article may be enforced by injunction, restraining order, declaratory relief, or such other order as may be imposed by a court with appropriate jurisdiction.

Sec. 9.08.260. Judicial review.

After complying with the requirements of section 9.08.190, an aggrieved person may file a request for judicial review of a decision by the city commission made pursuant to this article. The request for review shall be filed no later than 30 days after the commission's action.

Secs. 9.08.270-9.07.399. Reserved.

ARTICLE 9. – DESIGN AND CONSTRUCTION STANDARDS FOR STREETS, SIDEWALKS AND TRAILS

Sec. 9.09.010. Design and Construction Standards for Streets, Sidewalks and Trails.

Sec. 9.09.020. Violation; Penalty.

Secs. 9.09.030-9.09.199. Reserved.

Sec. 9.09.010. Design and Construction Standards for Streets, Sidewalks and Trails.

The city adopts for its design and construction of its streets, sidewalks and trails those standards as found in the City of Polson's *Manual of Standards for Design & Construction*, currently adopted and as amended hereinafter. Such *Manual* is on file and of record with the city clerk. In addition where applicable, the city adopts the Montana Public Works Standard Specifications (MPWSS) for all public works not subject to the *Manual* or in conflict therewith.

Sec. 9.09.020. Violation; Penalty.

Any person violating any of these standards, without approval by the city manager, shall be considered as having violated the ordinances of the city and shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished as provided in these ordinances.

Secs. 9.09.030-9.09.199. Reserved.