

**ORDINANCE Ord #2015-004**

**AN ORDINANCE TO ADOPT  
CHAPTER 12, ARTICLE 6. EXCAVATIONS  
TO THE CITY OF POLSON BOOK OF ORDINANCES**

**WHEREAS**, the City Commission of Polson has determined that it is in the best interests of the citizens of Polson to reestablish, rewrite and reauthorize the Ordinances of the City;

**WHEREAS**, the Commission recognizes the most expeditious way of adopting such Ordinances is by adoption in a near sequential manner over a term of months to give the Commission and the public time to review the material;

**WHEREAS**, it appears in the best public interest that the following ordinances be adopted for the City of Polson;

**NOW, THEREFORE, BE IT ORDAINED** by the City of Polson that the following Article of the Ordinances of the City of Polson be adopted in full as attachment hereto:

**CHAPTER 12, ARTICLE 6. EXCAVATIONS**

The clerk is hereby instructed to codify this Ordinance and to place the same in the Book of Ordinances of the City of Polson.

Date: 02/18/2015

First Reading:      5   ayes    \_\_\_ nays    \_\_\_ abstentions      2   absent

Date: 03/02/2015

Second Reading:      5   ayes    \_\_\_ nays    \_\_\_ abstentions      2   absent

Effective Date:    04/02/2015

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

Attest:

\_\_\_\_\_  
City Clerk Cora E. Pritt

## **Chapter 12.06 EXCAVATIONS**

### Sections:

- 12.06.005 Definitions.
- 12.06.010 Permit--Required.
- 12.06.020 Permit--Application.
- 12.06.030 Permit--Application--Fee.
- 12.06.035 Permit fee exceptions.
- 12.06.036 Investigation Fees; Work without a Permit.
- 12.06.037 Permit Fee Refunds.
- 12.06.040 Construction Specifications.
- 12.06.045 Specifications for cutting of Portland cement concrete or asphalt.
- 12.06.050 Digging of surface and base materials.
- 12.06.060 Contractor Responsibility and Public Safety.
- 12.06.070 Backfilling--Sewer pipe bedding and subgrade requirements.
- 12.06.080 Backfilling--Specifications of materials for top six inches of finish subgrade.
- 12.06.090 Resurfacing specifications for Public Roadways.
- 12.06.100 Applicant to complete excavation and repair surface within fifteen days--Inspection and completion of repair by city.
- 12.06.110 Surety bond requirements.
- 12.06.120 Liability of city.
- 12.06.130 Assessments for damaging or opening pavement.
- 12.06.140 Permit requirements for public utility and cable television companies.
- 12.06.150 Public utility companies--Regulations as to backfilling and resurfacing.
- 12.06.160 Cleaning up of excavation site.
- 12.06.170 Requirements for special projects
- 12.06.180 Violation--Penalty.

### **12.06.005 Definitions.**

- A. Excavation shall be defined as the removal, replacement or the change in grade of any soils or finish surfacing materials on public or private property for the purpose of installing, repairing, maintaining, replacing, removing or investigating underground facilities including but not limited to monitor wells, water, sewer, gas, electric, telephone, data cable, fiber optic, television cable, utility poles, and those underground items necessary for their function.
- B. Excavator shall be defined as only those persons, firms or corporations who are authorized and bonded to excavate by the city.

### **12.06.010 Permit--Required.**

It shall be unlawful for any person, firm or corporation to make an excavation without being authorized and bonded excavator, and first obtaining an excavation permit from the city. Permits shall be required for the following:

- A. Installing, maintaining, replacing, removing, repairing or investigating utility lines that are to be connected to a public utility in the streets, alleys, public rights-of-way or public easements.

B. Excavating for any purpose in any street, alley, public utility easement or public right-of-way.

C. Exceptions:

1. Landscaping sprinklers and irrigation systems shall only require an excavation permit if the installation is in a State Route right-of-way. Repair of landscaping sprinkler and irrigation system does not require an excavation permit.
2. The installation, maintenance, removal, repair or replacement of utility poles shall only require an excavation permit if the owner of the pole does not have a written agreement with the city for the relocation of utility poles.
3. Work performed by the city for its use and benefit.

**12.06.020 Permit--Application.**

A. Application shall be made to the city by the excavator stating the purpose for which the excavation is to be made, including locations, depth, width, length and amount of time such excavation is to remain open or unfilled.

B. Applicant shall file, upon request, with the city for approval, one drawing of the proposed improvements before permit is issued.

C. Before issuance of a permit the excavator shall contact all underground facilities for their locations as stated in M.C.A. 69-4-502. The excavator shall have a location number from the Underground Location Center before a permit is issued. In addition to public utility lines, the excavator shall locate and protect private utility lines such as water and sewer services and private irrigation lines.

D. Before issuance of an excavation permit all fees, except the fees specified in Section 12.24.060 shall be paid. The fees to be paid may include but not limited to a: General Performance Bond, any contract for sewer, sewer development, any Special Improvement District fees, and rebate fees, if any.

E. Permits shall expire by limitation and become null and void if work authorized is not commenced within thirty (30) calendar days after date of issuance. Also, permits shall expire by limitation and become null and void if work authorized by the permit is suspended by the excavator for more than fifteen calendar days. Before work is recommenced, a new permit shall be issued and a full permit fee paid. Extension of time on permits may be granted by the city manager, or a designated agent.

F. Excavators shall give the city staff at least three hours' notice of beginning excavation and two hours' notice of commencing backfill.

G. No excavation shall extend over half the width of any traveled portion of the street right-of-way section at any time, except under written authorization of the city road superintendent, or a designated agent.

H. Issuance of a permit will require that the excavator shall have a competent

person, as defined by the Federal Occupational Safety and Health Administration (OSHA), on site during all work associated with this permit.

**12.06.030 Permit--Application--Fee.** Permit fees are based on the average direct and indirect costs to provide plan checking, permit administration, field inspection, record management, warranty inspection. The fee for obtaining an excavation permit shall be in accordance with the Schedule of Fees to be adopted or amended hereafter by city resolution.

Revenue from these fees shall be credited to the general fund.

**12.06.035 Permit fee exceptions:**

- A. Any excavator doing work for the City may be exempted from permit fees when authorized by the city manager.
- B. Work performed by the City is exempt from permit fees.

**12.06.036 Investigation Fees; Work without a Permit.**

Whenever any work for which a permit is required by this ordinance has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this ordinance. The payment of such investigation fee shall not exempt any person from compliance with all provisions of this ordinance nor from penalty prescribed by ~~Section 12.24.199~~ these Ordinances.

Exception: During the period of time when city offices are closed, emergency repairs may be performed by the excavator before obtaining a permit. The permit shall be obtained by the excavator within eight working hours after city offices are open.

**12.06.037 Permit Fee Refunds.**

No refunds or credits of excavation permit fees will be given when permit application errors or mistakes are made by excavators. Refunds or credits of excavation permit fees shall be given when permit application errors or mistakes are caused by the city.

**12.06.040 Construction Specifications.**

All work shall conform to the applicable sections of the Montana Public Works Standard Specifications (MPWSS). latest edition; City of Polson policies, regulations, requirements, addendums, or contract specification approved by the City Engineer; or as specified in this ordinance. Whenever there is a conflict between MPWSS and the city ordinance, the stricter specification shall govern. Whenever there is a conflict between MPWSS and approved contract specifications, the approved contract specifications shall govern. All work shall be inspected for conformance with these specifications by the city manager or his/her designee. Unless waived by the city manager or required differently by the MPWSS all placement of utilities described in Section 12.06.005(A) above in the right of way shall have a ten foot (10') horizontal separation from existing utilities or improvements and a three foot (3') vertical separation.

#### **12.06.045 Specifications for cutting of Portland cement concrete or asphalt.**

A. Concrete areaways, curbs, driveways, pavements, sidewalks and slabs shall be cut in a manner and the extent specified herein or as directed by the city staff. The outer edge of all cuts through concrete items shall be sawn through to a depth of not less than fifty percent of the total thickness by means of a power-driven concrete saw. All cuts within the city right-of-way shall be in a straight line perpendicular or parallel to the center line of the excavation unless approved by the city staff. Concrete and asphalt items encountered when excavating shall be removed to a width of twelve inches greater than the width of the trench. Where the cut line is less than five feet from the edge of the existing pavement remove and replace the entire pavement section between the trench and edge of pavement.

B. Asphaltic surface cutting shall be done with a jackhammer with a spade bit, power driven saw or cutting tool to the same requirements cited above. An excavator may use a backhoe bucket in removal of asphaltic surface; square cutting of asphaltic surface to follow backfill operation with area to be square cut marked by the city staff.

C. Whenever an excavator is required to remove curb or sidewalk when reinstalling, replacing, or repairing utility lines, they shall be allowed to. and required to reinstall such curbs and sidewalks as provided in this chapter:

1. The concrete curb and sidewalk work shall conform to all city regulations and concrete forms shall be inspected before placement of concrete.
2. The excavator shall indicate on the excavation permit application their intention to perform any concrete curb or sidewalk replacement in the public right-of-way.
3. The excavation permit shall serve as a permit to remove and replace concrete curb and sidewalk within the limits of the excavation work authorized by the excavation permit

#### **12.06.050 Digging of surface and base materials.**

Surface and sub-base materials shall be removed by hand or machine in such a manner as to disturb or displace the least possible surface area in excess of that which must be removed for the item to be installed. No undercutting of subgrade shall be permitted. If undercutting occurs, that section where undercutting took place shall be excavated and repaired in conformity with Section 12.06.070.

#### **12.06.060 Contractor Responsibility and Public Safety.**

A. Responsibility: The Excavator in accepting and acting under the excavation permit granted under the provisions hereof agrees to assume full responsibility for injury to persons or losses or damage to property incurred by reason of, or arising out of, any act or omission of such excavation or to properly barricade, guard, and warn the public of such excavation.

B. Traffic Control: Prior to the issuance of a permit the excavator shall provide a traffic control plan (as defined in the Manual on Uniform Traffic Control Devices Part VI

of the U.S. Department of Transportation Federal Highway Administration, latest edition) or as otherwise approved by the street superintendent. The excavator shall be responsible for maintaining safe travel corridors for all vehicle, bicycle and pedestrian traffic as part of the approved traffic control plan. Traffic control devices shall be installed in accordance with the approved traffic control plan before construction or maintenance operations, and shall be properly maintained and operated during the time such special conditions exist. They shall remain in place only as long as they are needed and shall be immediately removed thereafter. Where operations are performed in stages, there shall be in place only those devices that apply to the conditions present. Devices or signs that do not apply to existing conditions shall be removed, covered or turned so as to not be readable by oncoming traffic. Barricade and sign supports shall be constructed and erected in a proper manner. Weeds, trees shrubbery, construction materials, equipment, spoil piles etc., shall not obscure any traffic control device. Excavated material that is stockpiled on city right-of-way shall be safeguarded by means of flashing barricades and proper traffic regulatory signing. All safeguarding of excavation projects must conform to the Manual on Uniform Traffic Control Devices for Streets and Highways, U.S. Department of Transportation Federal Highway Administration.

C. Excavation Safety: All work covered in this ordinance shall meet current OSHA Safety and Health Standards. Failure to comply with OSHA rules may result in an immediate loss of the excavation permit. The excavator shall take all necessary precaution to prevent injury to workers and others, and to protect any and all adjacent private and public property. This shall include protecting sumps, storm drains, sidewalks, curbs, sprinkler systems, traffic signals, etc. The excavator shall be required to have a competent person, as defined by OSHA. on site during all work associated with the Excavation Permit. The excavator shall be solely responsible for all safety related to the excavation.

#### **12.06.070 Backfilling-Pipe and or Conduit bedding and subgrade requirements.**

A. Sewer Pipe Bedding. Pipe bedding material from four inches below pipe to six inches above pipe shall be clean, natural, unwashed sand and shall be free from rocks or stones over one inch in diameter. If suitable material is not found in the trench, the contractor will be required to furnish material that is suitable. Bedding material shall be tamped evenly on both sides of pipe alternately up to not less than six inches above the pipe. Mechanical tampers may be used provided results equal to hand tamping methods can be obtained. Material shall be placed in layers not exceeding six inches loose thickness before compaction and shall have moisture content such that ninety percent proctor density can be secured.

B. Subgrade. The material removed in the excavation may be used in backfilling to within six inches of the finished grade line; provided, that all material exceeding six inches in diameter is removed and hauled to waste. None of the following shall be placed in backfill: heavy plastic clay; hard, dry clay; vegetation or organic material; wet pavement, asphalt, brick or other debris. All backfill shall be performed in dry, frost-free conditions. Material shall be placed in lifts not exceeding twenty-four inches to each lift, if mechanically tamped. Each lift shall be thoroughly compacted by use of power tamping equipment to obtain ninety-five percent proctor density. In the discretion of the city, the excavator may be required to test and certify the compaction percent at his/her expense. Material containing a higher moisture content than is required to compact to ninety-five percent proctor density shall be removed and hauled to waste, with

contractor required to furnish material that is suitable. In no case shall any backfill be made having less than a ninety five percent proctor density after compaction.

**12.06.080 Backfilling--Specifications of materials for top six inches of finish subgrade.**

A. The top six inches of finished subgrade shall be filled with material meeting the following specifications compacted to ninety-five percent proctor density:

<u>Passing Screen Size</u>	<u>Percent by Weight Passing</u>
1 inch	100
No. 4	40-70
No. 10	25-55
200 Mesh	2-10

B. All materials, methods of backfill and compaction shall be approved by the city staff.

**12.06.090 Resurfacing specifications for Public Roadways.** Finished surfaces shall be free of ruts, defects and depressions exceeding 3/8-inch measured with a ten foot straightedge paralleling the center of the roadway, and must have a smooth riding quality. After bringing the compacted backfill to finished subgrade, the excavator shall employ the following methods where applicable:

A. Concrete Base or Surface. Where the base or surface is concrete, the permittee shall immediately after completion of backfill pour concrete meeting the current city requirements for concrete replacement. All concrete replacement depth shall be a minimum of eight inches, or as directed the city staff. The new concrete shall be properly cured out before opening the patch to traffic loads.

B. Bituminous Surface on Improved Base. After bringing the compacted backfill to top of subgrade in a manner specified in this chapter, the excavator shall cause bituminous material, of a type and grade equal to the original, to be placed on the subgrade and rolled or otherwise compacted in such a way as to smoothly join the original material without noticeable rise or fall above or beneath the original grade of the adjoining material. Tack coat shall be applied to square cut edges to insure proper bonding to original surface material. The thickness of the replaced surfacing shall be as follows:

1. Residential streets shall be two inches.
2. Commercial streets shall be three inches.
3. Arterial and collector streets shall be four inches with two lifts required.
4. State primary routes shall be six inches with two lifts required.

C. Unimproved Surface. Where the excavation is on unimproved surfaces, the backfill shall be brought to finish grade by using the material, compaction methods and surface acceptance, as provided in Sections 12.24.070 and 12.24.080. When the trench is in natural soil, the top six inches shall be filled with topsoil equal to the natural topsoil of the surrounding area. This shall then be graded and shaped to conform to the natural contours of the area.

D. Resurfacing Materials. Materials used in resurfacing shall be as follows:

1. Prime Coat. All square cut edges shall be primed with MC cutback oils before making a patch.
2. Plant Mix Asphaltic Types. Asphaltic mix shall be the type and grade specified by the city staff.
3. Asphaltic Hot Mix and Cold Mix. Asphaltic plant hot mix shall be used from April 1st to October 31st of any year. Asphaltic plant cold mix shall be used from November 1st to March 31st of any year and shall thereafter be removed and replaced with hot mix. Adjustments may be made, as to dates and types of mix, upon written approval of the city staff .

E. Pavement Marking. All pavement marking removed or damaged by excavation work shall be replaced with the same type of material used in the original markings, or those approved by the city staff. The work must meet the installation and material specifications commensurate with the type of marking used. Thermoplastic pavement marking may be replaced with plastic inlay tape or an approved equal.

F. Warranty. The holder of the permit shall warrant the work in the public right-of-way to be free from backfill settlement and surface condition for two years following the completed, accepted work. Warranty starts on date project is accepted by the city staff.

**12.06.100 Applicant to complete excavation and repair surface within fifteen days-- Inspection and completion.**

A. An applicant for a permit to excavate any surface within public right-of-way of the city shall, within fifteen calendar days of completion of excavation operations, repair and complete the surface of the excavation. Extension of time may be granted by the the city upon showing of justifiable cause by the excavator; such extension when granted must be in writing.

B. If inspection of project, while under construction, finds construction methods being practiced not conforming to this chapter, a correction notice will be issued by the city staff listing items or procedures not meeting requirements of this chapter. If corrections listed on notice are not brought to conformity with this chapter, a stop work order for the project will be issued. Work on the project shall only resume after a meeting with the excavator, the city manager or designee, and the city staff member who issued the stop work order. If the project is not brought into conformity with this chapter, the city road superintendent shall cause the excavation to be placed in a condition that does meet the requirements of this chapter. Costs shall be assessed to the excavator's bond.

**12.06.110 Surety bond requirements.**

A. An applicant for a permit must also file a surety bond as required in Section 5.08.060 in the principal amount of not less than the contract amount, but in no case, less than twenty thousand dollars. In addition to the requirements of Section 5.08.060, the bond shall also be conditioned upon the proper backfill of the excavation, proper installation of any utility service or main line and restoration of surface in accordance with the provision of this chapter. Such bond shall be required of all applicants for permits without exception.



B. Any evidence of settlement of backfill or deterioration or failure of excavator's patch applied to the surface in the public right-of-way within two years after completion and acceptance of the work shall be deemed conclusive evidence of defective backfill or surface restoration by the permittee, excavator and in such event, after three days' notice to the excavator and their bondsman, the city road superintendent or a designated agent may elect to re-excavate and backfill properly or to repair defective surface restorations, or both, in accordance with the provisions of this chapter, and the costs thereof shall be assessed against the bond provided for by this section and bond filed under this section must so recite the right of the city to do so.

**12.06.120 Liability of city.** The city shall assume no responsibility for excavator's surface patches or for any backfills. The city road superintendent or his/her designee's report upon failure of any excavator's backfill substance or upon any surface failure shall be conclusive.

**12.06.130 Assessments for damaging or opening pavement.**

A. A charge separate from the excavation permit fee must be paid by the excavator for each square foot of pavement to be removed or damaged. Pavement may be considered damaged if it is gauged, scraped, cracked, or has wheel or tread marks as a result of excavation operations.

B. The asphalt cut assessment rate shall be determined in accordance with the schedule of fees adopted or amended hereafter by city resolution.

Asphalt cutting on streets 0-2 years old will not be allowed unless approved by the city manager or designee. The asphalt assessment and the chip and seal assessment shall both be assessed when applicable

C. The city manager may, in his/her judgment, waive the assessment if the pavement is in poor condition. Monies obtained by these assessments shall be credited to the general fund and earmarked for street construction and repairs.

D. Exception: When the excavation is performed at the request of the city for street reconstruction that requires utility improvements, no pavement assessment will be required of the utility making the improvements.

**12.06.140 Permit requirements for public utility and cable television companies.**

A. License. Any public utility or cable television company owning or operating underground facilities shall annually apply for an excavation license to cover all excavations to be made by or on behalf of such company during each fiscal year.

B. Bond. Public utility and cable television companies shall file a surety bond in the principal sum of fifty thousand dollars concerning all of the excavations made by or on behalf of the company. Such bond shall be filed with the city prior to issuance of excavation permits.

C. Insurance. Public utility and cable television companies shall file with the city evidence of public liability insurance in the minimum sum of \$1,000,000.

D. Public utility and cable television companies shall pay for permits as specified in the schedule of fees adopted herefor or by separate franchise agreement.

E. Comprehensive Development Plan. Each utility company operating within the city shall provide a comprehensive development plan for the use of the public rights-of-way or easements for public utilities. The utility company shall provide the city staff with a minimum of two copies of the plan. The plan shall be a five-year type plan plus information regarding long-range plans. Supplemental updates of the plan shall be provided each year prior to January 1 of each year. The plan and yearly supplements shall contain but shall not be limited to the following:

1. Master plan of the utility in the public rights-of-way or easements;
2. Reconstruction, extension or replacement plans;
3. Yearly program for construction planned;
4. Schedules of overall improvements;
5. Location of the proposed improvement within the public rights-of-way.

Such plan submission may be waived, or the submittal requirements changed by the city manager, if it appears that public filing may be subject to disclosure of proprietary information of the utility.

G. Utility Locations and Plan Review. Locations of utilities placed in public right-of-way and public utility easements shall be approved by the city manager or designee. One set of construction plans shall be submitted to the city staff for review and approval for the installation or replacement of utilities within the public right-of-way and public utility easements. The construction plans shall be drawn to scale and include right-of-way boundaries, street names, location of existing infrastructure including curbs, sidewalks, edges of asphalt, and other utilities.

**12.06.150 Public utility companies--Regulations as to backfilling and resurfacing.** Each utility company operating in the city shall be governed as to backfill and surface restoration by the provisions of this article. It is the intention of this section to recognize the special requirements for the continual maintenance or service of electric, water, telephone, fiber optic, gas and heating system utilities and to permit such utilities to operate in a reasonable manner as to the making of excavations necessary to restore or maintain their services.

**12.06.160 Cleaning up of excavation site.** The excavator shall prevent all mud, rocks, or debris from being spilled or dragged onto rights-of-way outside the excavation site. Upon completion of excavation work, the entire area in all directions shall be cleared of all debris, boulders and all other excess materials from excavation, backfill and resurfacing operations to the satisfaction of the city staff. This clean up requirement shall include private property, as well as public rights-of-way.

**12.06.170 Requirements for special improvement projects.** Contractor and subcontractors performing excavations for special improvement districts shall conform to the specifications and contract documents for that special improvement district in lieu of the engineering construction requirements of this chapter.

**12.06.180 Violation--Penalty.** It shall be unlawful for any person to fail to perform any of the conditions set out in this chapter. Upon conviction, a minimum fine of five hundred dollars will be levied. Further, any person convicted of a violation of this chapter shall be required to post with

the city a cash bond in the amount of five thousand dollars before they may perform any further excavating work within the city. The cash bond shall be used on order of the city manager to repair and maintain any further excavations made by such person.be levied. Further, any person convicted of a violation of this chapter shall be required to post with the city a cash bond in the amount of five thousand dollars before they may perform any further excavating work within the city. The cash bond shall be used on order of the city manager to repair and maintain any further excavations made by such person.