

ORDINANCE 2015 ORD#001

**AN ORDINANCE TO ADOPT
CHAPTER 2, ARTICLE 7. EMINENT DOMAIN AND
CHAPTER 2, ARTICLE 8, CODE OF ETHICS
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 Articles of the Ordinances of the City of Polson be adopted in full as attachments hereto:

ARTICLE 7. EMINENT DOMAIN

ARTICLE 8. CODE OF ETHICS

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: 01/08/2015

First Reading: 6 ayes nays 1 absent

Date: 02/02/2015

Second Reading: 7 ayes nays abstentions

Effective Date: March 2, 2015

Mayor Heather Knutson

Attest:

City Clerk Cora E. Pritt

ARTICLE 7. EMINENT DOMAIN

Sec. 2.07.100. Initiation of condemnation.

Sec. 2.07.110. Effect of resolution.

Sec. 2.07.120. Eminent domain procedure.

Sec. 2.07.130. State law superseded.

Secs. 2.07.140-2.07.199. Reserved

Sec. 2.07.100. Extent of power.

A. The city shall have the power, known as eminent domain, to condemn and take property for all public purposes and city uses and purposes. The extent of the power and authority shall not be limited to the uses described in MCA title 70, chapters 30 and 31 (MCA 70-30-101 et seq., and MCA 70-31-101 et seq.) and Urban Renewal Law, MCA Title 7, Chapter 15, parts 42 and 43 (MCA 7-15-4201 et seq. and MCA 7-15-4301 et seq.); but shall be limited as follows:

1. *Prohibiting eminent domain for economic development.* Notwithstanding any other provision of law, neither the city nor any of its subdivisions shall use eminent domain to take private property for economic development without the consent of the owner.
2. *Economic development.* The term "economic development" means the use of powers of eminent domain to acquire private property for private use in the implementation of an urban renewal project or similar redevelopment plan.
3. *Prohibiting transfer of condemned property to private parties.* Notwithstanding any other provision of law, private property acquired through eminent domain without the consent of the owner shall not be dedicated, sold, leased in substantial part, or otherwise transferred to a private person, partnership, corporation, or any other entity for a period of ten years following the acquisition of the property by the city, except that property may be transferred or leased:

i. To private entities that are public utilities or common carriers such as a railroad or toll road; and

ii. To private entities that occupy an incidental area in a public project, such as a retail establishment on the ground floor of a public building.

Sec. 2.07.110. Initiation of condemnation.

The city shall initiate all eminent domain actions by the city commission passing a resolution declaring the public purpose for which the condemnation is being made, which resolution shall describe the property to be taken, and the extent of the interest condemned. The resolution shall authorize the city officials to proceed.

Sec. 2.07.120. Effect of resolution.

The passage of the resolution initiating condemnation and taking of private property for any public use declared in the resolution is conclusive as to the necessity of the taking.

Sec. 2.07.130. Eminent domain procedure

The eminent domain procedures shall follow the state statutes.

Sec. 2.07.140. State law superseded.

MCA 7-5-4106 is hereby superseded and the Urban Renewal Law as set forth in MCA Title 7, Chapter 15, parts 42 and 43 (MCA 7-15-4201 et seq., MCA 7-15-4301 et seq.), where inconsistent herewith is hereby superseded. It is the intent of this article that the city may take full advantage of the urban renewal law by following the procedures set forth herein and shall not be restricted in the exercise of powers of eminent domain for the purposes described in the urban renewal law by the provisions thereof.

Secs. 2.07.150-2.07.199. Reserved

ARTICLE 8. CODE OF ETHICS

Sec. 2.08.100. Declaration of policy.

Sec. 2.08.110. Definitions.

Sec. 2.08.120. Persons covered.

Sec. 2.08.130. Standards of conduct.

Sec. 2.08.140. Use of city resources.

Sec. 2.08.150. Treatment of the public.

Sec. 2.08.160. Conflict of interest.

Sec. 2.08.170. Confidential information.

Sec. 2.08.180. Gifts, gratuities and favors.

Sec. 2.08.190. Financial disclosure statement.

Sec. 2.08.200. Post-employment/service activities.

Sec. 2.08.210. Public notice required for former public official or employees/compliance with state law.

Secs. 2.08.220-2.08.999. Reserved.

Sec. 2.08.100. Declaration of policy.

The proper operation of the city government requires that public officials and employees be independent, impartial, accountable, and responsible; that governmental policies and decisions be made in the proper channels of the governmental structure; that public office and employment not be used for personal gain nor be used to harass, intimidate, or retaliate against citizens and other employees and officials; and that the public have confidence in the integrity of its government. The purpose of this code of ethics is to set forth standards of ethical conduct, to assist public officials and employees in establishing guidelines for their conduct, to foster the development and maintenance of a tradition of responsible, accountable and effective public service, and to prohibit conflict between public duty and private interest. Nothing herein shall be construed to relieve any employee or official of the responsibilities set forth in MCA 2-2-104, 2-2-105, 2-2-121, 2-2-131, and 7-5-4109.

Sec. 2.08.110. Definitions.

As used in this division, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- A. "Agency" means the city commission and all other agencies, board, committees, departments, and offices of the city, without exception.
- B. "Confidential information" means any information which is not available to the general public and which is obtained only by reason of an official's or employee's position.
- C. "Direct advantage" means a gain or benefit to the former public official or employee; the public official or employee's present principal or employer.
- D. "Employee" means all individuals employed by the city and its agencies, but does not include independent contractors hired by the city, city commissioners, or any municipal judge.

- E. "Financial interest" means any ownership interest, contractual relationship, business relationship, or other interest which will result in a monetary or other material benefit to an official or employee, either tangibly or intangibly, which has a value of more than \$15.00, other than the official or employee's duly authorized salary or compensation for the official or employee's services to the city, and which interest is not common to the interest of all other citizens of the city. The following financial interest shall be imputed to be those of an official or an employee of the city: that of a spouse or child of an official or employee; that of any prime contractor or subcontractor of the city, in which the official or employee or any member of the official or employee's immediate family has any direct or indirect interest as the proprietor, by ownership of stock or partnership interest.
- F. "Immediate family" means spouse and children.
- G. "Improper governmental action" includes any action taken by an official or employee during the performance of the officer's or employee's duties, regardless of whether the action is within the scope of the employee's employment or the officer's duties, and that:
1. Violates the standards of conduct listed in section 2.08.130 and/or 2.08.140
 2. Violates the standards prescribed by Title 2, Chapter 2, of Montana Code Annotated (MCA 2-2-101 et seq.);
 3. Is intended to harass, intimidate, or retaliate against any other employee, official, or any member of the public for the conduct protected under this division or state or federal law;
 4. Violates a fiduciary duty to the city or its citizens; or
 5. Creates a substantial or specific danger to the public's health or safety.
- Improper governmental action excludes personnel actions, including, but not limited to: employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or civil service laws, or alleged violations of agreements with labor organizations under collective bargaining. A properly authorized city program or budgetary expenditure does not become an improper governmental action because a reporting person dissents from or disagrees with the city policy or decision.
- H. "Officials" means all officers and members of the city's agencies, whether elected or appointed, whether paid or unpaid, whether permanent, temporary, or alternate, and that are not employees.
- I. "Personal interest" means any interest in the matter which would affect the action of the official or employee other than a financial interest, and other than an interest because of membership in, or affiliation with, but not employment by a social, fraternal, charitable, service, educational, religious, governmental, health service, philanthropic, cultural, or similar nonprofit institution or organization.
- J. "Transaction" means the offer of, or the sale, purchase, or furnishing of, any real or personal property or services, by or to any person or entity directly or indirectly, as vendor or vendee, prime contractor, subcontractor, or otherwise, for

the use and benefit of the city or of such other person or entity for a valuable consideration.

Sec. 2.08.120. Persons covered.

All city officials and employees shall be bound by this division. All officials and all employees shall be bound by this division. Upon initial employment and annually thereafter each employee, official and member of every board or committee shall verify that such employee, official and board or committee member has not and will not knowingly violate any provision of this division or the rules, standards of conduct or rules of ethics established by state law.

Sec. 2.08.130. Standards of conduct.

- A. Officials and employees have an obligation to act morally and honestly in discharging their responsibilities.
- B. Officials and employees shall conduct themselves with propriety, discharge their duties impartially and fairly, and make continuing efforts toward attaining and maintaining high standards of conduct.
- C. Each official or employee serving on a multimember agency is expected to devote the time and effort necessary to the successful functioning of such agency.
- D. No official or employee shall improperly use, directly or indirectly, the official or employee's city position to secure any financial interest or personal interest for said official employee, or others.
- E. No official or employee shall, for any reason, use or attempt to use the official or employee's position to improperly influence any other official or employee in the performance of such official or employee's official duties.
- F. No employee shall act in a private capacity on matters that they are directly responsible for as an employee.
- G. No official shall act in a private capacity on matters acted upon as an official.
- H. All officials and employees shall refrain from improper governmental action as defined in this division.
- I. No official or employee shall retaliate against any employee, official, or member of the public regarding an allegation of improper governmental action because that employee, official, or member of the public proceeded or is proceeding in good faith under this division including acting under section 2.03.580.D.

Sec. 2.08.140. Use of city resources.

No official or employee shall use, or permit the use of, city-owned vehicles, equipment, material, or city personnel for personal use of the employee or official or anyone else or to be used in any manner prohibited by state statutes or city ordinance. Except where expressly

allowed by written contract, no city automobile shall be used by a city employee or official going to or from home, except when such use is for the benefit of the city, as in the case of an employee on call outside of the employee's working hours.

Sec. 2.08.150. Treatment of the public and by the public.

City officials and employees represent the city government to the public. In their contact with the public, officials and employees must bear in mind their role as representatives of the city. Each member of the public shall be treated courteously, impartially, and fairly. All employees and officials shall, in the exercise of their official duties, refrain from taking any action, making of any statement, or authoring any document that is intended to harass, intimidate, or retaliate against any member of the public. Employees and officials have the expectation that they will also be treated courteously and with respect for their position. Harassment, intimidation or retaliation by a member of the public will not be tolerated and may lead to criminal prosecution.

Sec. 2.08.160. Conflict of interest.

- A. Nothing in this section shall be interpreted or construed to prohibit any official or employee from exercising their own individual legal rights as to their own personal interests in a transaction or matter pending before the city or any of its agencies, or to prohibit an official or employee from testifying as a witness in any administrative or judicial proceeding. However, no official or employee who represents their own personal interest before an agency of which they are a member or employee, or a member or employee of an agency to which the matter may be appealed, shall participate in the decision of that agency or the appellate agency.
- B. No official or employee shall engage in any employment or business which conflicts with the proper discharge of such official or employee's duties.
- C. No official or employee shall take or influence official action if the official or employee has a financial or personal interest in a transaction or matter with the city.
- D. If an official or employee has a financial or personal interest in the outcome of a transaction or matter coming before the agency of which they are a member or by which they are employed, such official or employee shall:
 - 1. Publicly disclose on the record of the agency, or to their superior or other appropriate authority, the existence of such financial or personal interest; and
 - 2. Except as authorized pursuant to 2.03.520.A and G, shall not engage in deliberations concerning the matter or transaction, shall be disqualified from acting on the matter or transaction and shall not communicate about such matter or transaction with any person who will participate in an action to be taken on such matter or transaction.
- E. No employee, whether paid or unpaid shall represent or appear on behalf of any individual or entity before any agency of the city, or take any appellate

proceedings from any action of such agency, either personally or through an associate or partner.

- F. No official whether paid or unpaid, shall represent or appear on behalf of any individual or entity in transaction or matter of concern to the agency on which that official serves, either before that agency or any other agency of the city, or before the city commission, or take any appellate proceedings from any action of such agency or the commission. Such representation may be made by the official's associate or partner, provided no reference to the participation of the involved official is made except for certification or other required identification on prepared documents. The involved official shall not engage in deliberations concerning a transaction or matter represented by an associate or partner, shall disqualify himself/herself from acting on the transaction or matter, and shall not communicate about such matter with any person who will participate in the action to be taken on such transaction or matter.
- G. A city commissioner or mayor, as authorized pursuant to 2-2-121(10), MCA, may take action despite a conflict of interest described in this section if that commissioner's or mayor's participation is necessary for the city commission to obtain a quorum or to otherwise enable the city commission to act. If so, the commissioner or mayor shall disclose the interest creating the conflict prior to performing the official act.
- H. This section does not absolve any official or employee from complying with Title 2, Chapter 2, MCA. Any official or employee with a conflict of interest under this section shall, in addition to other requirements in this section and when required by law, comply fully with the disclosure requirements of 2-2-131, MCA, and shall file this disclosure with the Montana Commissioner of Political Practices prior to acting.

Sec. 2.08.170. Confidential information.

- A. No official or employee shall, without legal authority, disclose confidential information concerning the personnel, property, government, or affairs of the city.
- B. No official or employee shall use confidential information to advance such official or employees' own financial or personal interest or the financial or personal interests of any other person.
- C. Nothing in this section shall be interpreted as prohibiting the disclosure of information required by law to be disclosed.

Sec. 2.08.180. Gifts, gratuities and favors.

- A. Legislative Intent. The intent of this section is to further implement the declaration of policy set forth in 2.08.100 and establish specific standards of conduct related to gifts, gratuities, and favors that are provided to a person because of a person's employment or official position with the city. These standards recognize legitimate governmental interests exist that allow an employee or official to accept a gift, gratuity or favor in limited circumstances without such acceptance being considered the use of public office for private gain. These interests include, but

are not limited to, establishing effective relationships with citizens, acceptance of professional and community awards for public service, and attending public events in an official capacity. At the same time, these standards make it clear that each public officer and employee holds such office or employment as a public trust.

- B. No official or employee shall accept a gift, gratuity, or favor from any person or entity:
 - 1. That would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;
 - 2. That the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken; or
 - 3. Has a value of \$100.00 or more for an individual.
- C. An employee or official may accept a gift, gratuity, or favor that has a value greater than \$25.00 but less than \$100.00 for an individual only if such gift, gratuity or favor:
 - 1. Complies with 2.08.180(B)(1) and (2); and
 - 2. Is provided incidental to and in conjunction with a public event where the official or employee's attendance is in fulfillment of their official duties.
- D. An employee or official may accept payment or reimbursement from a person or entity for necessary expenses such as travel, lodging, meals, and registration fees in excess of \$100.00 if the expense is incurred while representing the city and the reimbursement would not violate 2.08.180(B)(1) and (2). Reimbursement or payment for educational activities in excess of \$100.00 is permissible if the payment or reimbursement does not place or appear to place the official or employee under obligation, clearly serves the public good, and is not lavish or extravagant.
- E. Upon the acceptance of a gift, gratuity, favor or award, the recipient shall file a disclosure statement with the city manager. Such disclosure statement shall indicate the gift, its estimated value, the person or entity making the gift, the relationship to the employee or official, and the date of the gift. The disclosure statement is a public record.
- F. A gift, gratuity, or favor does not include:
 - 1. Items or services provided an employee or official in their private capacity and without relationship to their employment or official position;
 - 2. A prize received upon a random drawing at an event where the official or employee attends in their capacity as an employee or official, the drawing

is open to all attendees, and receipt of the prize does not place the official or employee under obligation;

3. An award publically presented to an employee or official in recognition of public service; and
4. Compensation for officiating at a ceremony.

Sec. 2.08.190. Post-employment /service activities.

- A. Within 12 months following the date on which a former public official or employee ceases service to the city, a former public official or employee may not, without complying with the provisions of 2.08.200:
 1. Make any formal or informal appearance before, or negotiate with any decision maker regarding a transaction or matter which was under the former public official or employee's direct responsibility or which the former public official or employee participated personally and substantially; or
 2. Represent or act or appear on behalf of an individual or entity other than the city in connection with any transaction or matter which was under the former public official or employee's direct responsibility or which the former public official or employee participated personally and substantially as a public official or employee.
- B. No former public official or employee may use any former city title, including on business cards, email, or stationery, except that such use is not prohibited if the former public official or employee clearly indicates service to the city is no longer ongoing.
- C. The provisions of this section do not absolve a public employee or official from complying with the prohibitions against contracting in 2-2-105(3), MCA, or the prohibitions against obtaining employment in 2-2-201, MCA.

Sec. 2.08.200. Public notice required for former public servants/compliance with state law.

During the first 12 months following the date on which a former public official or employee ceases service to the city:

- A. A former public official or employee desiring to perform an act restricted by 2.08.190. shall:
 1. File with the city clerk and with the city attorney not less than six business days prior to the appearance a written public notice of the former public official or employee's desire to perform an act restricted under 2.08.190. Such written notice shall state in substance the purpose for which the former public official or employee wishes to act other than as required by 2.08.190 and shall also indicate the responsibility the former public official or employee held over the transaction or matter or the nature of the former public official or employee's participation in the transaction or matter.

2. At the onset of the appearance orally disclose to the decision maker all offices or employment held by the former public official or employee while serving the city and the responsibility the former public official or employee held over the transaction or matter or the nature of the former public official or employee's participation in the transaction or matter. The city clerk shall post the written notice in a publicly accessible location on the city's website.
- B. A former public official or employee desiring to perform an act restricted by 2.08.190 who cannot reasonably meet the six-day notice period described in subsection A of this section may appear before a decision maker only at a duly noticed public meeting where a formal record of the proceedings is made. At the time of doing so, the former public official or employee shall comply with subsection A of this section.
 - C. Unless the act is otherwise prohibited by Title 2, Chapter 2, MCA, upon complying with subsections A or B of this section as appropriate, a former public official or employee is not prohibited from the activities proscribed in section 2.08.190. Nothing herein, however, shall be construed as authority to absolve any former public official or employee of their duty to comply with Title 2, Chapter 2, MCA..

Sec. 2.08.210. Reporting improper governmental action/rights/limitations/protected conduct.

A. *General.*

1. The provisions of this section are intended to work in harmony with the City of Polson Employee Handbook and provide remedies in addition to those listed in the employee handbook. Under no circumstances shall the provisions of this division be taken as authorization for any official to take or order disciplinary action be taken against a city employee for whom that official does not have authority to discipline or take action against pursuant to the city Charter or law.
2. Nothing herein shall be deemed to reduce or interfere with the rights of an employee, official, or member of the public under state or federal law regarding actions that may constitute an improper governmental action.

- B. *Right.* Every city employee or official shall have the right to report, in good faith and in accordance with this division, to a city official, employee or another government official pursuant to the procedures of this division information concerning improper governmental action.

C. *Limitations.*

1. This section does not authorize a city employee or official to report information that is subject to an applicable privilege against disclosure at law, unless waived, or to make a disclosure where prohibited by law. The purpose of this section is to protect and encourage employees and officials who know or in good faith believe improper governmental action has occurred to report those actions in good faith and in accordance with this division.

2. An employee or official reporting of the employee or official's own improper action does not grant the employee or official immunity from discipline (including but not limited to termination or removal from office) insofar as the employee or official's improper action would be cause for discipline or removal from office.
 3. This section does not grant an employee or official immunity from discipline (including but not limited to termination or removal from office) insofar as the employee's or official's reporting of alleged improper governmental action is found to have not been made in good faith or is found to have been made in an attempt to harass, intimidate or retaliate against the person who is the subject of the original allegation of improper governmental action.
- D. *Employee/official protection and protected conduct.* The following conduct by employees, an official, or a member of the public is protected under this section if carried out in good faith:
1. Reporting sexual harassment or workplace violence pursuant to the city's policies;
 2. Reporting any violations of title 2, chapter 2, of Montana Code Annotated, Standards of Conduct (MCA 2-2-101 et seq.) or title 49, of Montana Code Annotated, Human Rights (MCA 49-1-101 et seq.);
 3. Reporting any violation of the state's or city's criminal laws;
 4. Reporting violations of an employee's or official's fiduciary duties;
 5. Reporting any other improper governmental action as defined in this division;
 6. Cooperating in an investigation under this division, the city Charter, the city's personnel policies, title 49, MCA, or federal law, conducted by a duly authorized city employee or official or a duly authorized agent of the state or federal government; or
 7. Testifying in proceedings or prosecution arising out of an improper governmental action.

Secs. 2.08.220-2.08.999. Reserved.