

City of Polson, Montana

Polson Development Code 2016

Polson Development Code 2016

Acknowledgements

The 2016 Polson Development Code was made possible through the cooperation and assistance of many dedicated individuals. The following participants provided guidance and support through the course of the rewrite/update process:

Mayor of Polson

Heather Knutson

Polson City Commission

Todd Coutts, Ian Donovan, Todd Erickson, Ken Siler,
Jill Southerland, Stephen Turner

Polson City-County Planning Board

Sam Jacobson, Mike Lies, Gil Mangels, Lou Marchello, Tim McGinnis,
Mark McGuyer, Merle Parise, Joslyn Shackelford, David Rensvold

Polson Development Code Rewrite Committee

Dennis Duty, Lita Fonda, Lee Manicke, Karen Sargeant

Polson City Manager

Mark Shrives

Polson City Attorney

Richard Gebhardt

Polson Planning Department

Kyle Roberts, City Planner
David DeGrandpre, Land Solutions, LLC
Joel Nelson, Land Solutions, LLC

POLSON DEVELOPMENT CODE

TABLE OF CONTENTS

CHAPTER I – PURPOSE, AUTHORITY, AND GENERAL PROVISIONS	1
A. What This Chapter Does	1
<i>Division 1 – Purpose, Authority, Applicability and Compliance</i>	1
B. Purpose	1
C. Authority	1
D. Applicability	2
E. Relationship of These Regulations and Standards to the Polson Growth Policy	2
F. Compliance Required	2
<i>Division 2 – Transition from Previous Regulations</i>	2
G. Conflicting Ordinances and Resolutions	2
H. Vested Rights	2
I. Private Agreements	3
<i>Division 3 – Interpretation</i>	3
J. Meaning and Intent	3
K. Responsibility for Interpretation	3
L. Delegation of Authority	3
M. Burden of Proof	3
N. Requirements Minimum	3
O. Computation of Time	3
P. Severability	4
Q. Effective Date	4
CHAPTER II – ZONING DISTRICTS	5
A. What This Chapter Does	5
<i>Division 1 – Zoning Districts Established</i>	5
B. Zoning Districts	5
C. Overlay Districts	5
D. Zoning Map	5

E. District Boundaries.....	5
F. Land Use.....	6
G. Uses Preempted by State Statute.....	6
H. Use Table.....	6
<i>Division 2 – Zoning District Regulations</i>	8
I. Low Density Residential Zoning District	9
J. Medium Density Residential District	11
K. Old Town Zoning District	14
L. Mixed Residential District.....	16
M. Transitional Zoning District.....	19
N. Resort Zoning District	23
O. Highway Commercial Zoning District	27
P. Central Business Zoning District	30
Q. General Commercial – Industrial Zoning District	32
R. Recreational Vehicle and General Campgrounds Zoning District	34
S. Hospital Mixed Zoning District	41
T. Airport Safety Overlay District.....	44
<i>Division 1 – Procedural Requirements</i>	44
<i>Division 2 – Height and Use Limitations</i>	44
U. Wellhead Protection Overlay District.....	46
V. Resort Residential Overlay District	48
CHAPTER III – ZONING ADMINISTRATION	49
A. What This Chapter Does.....	49
<i>Division 1 – Permits Required</i>	49
B. Permits Required.....	49
C. Exemptions for Development Activity.....	49
D. Natural Resource Development.....	50
E. Application Forms and Fees.....	50
F. Contents of Site Plans.....	50
G. Site Inspection.....	50
H. Zoning Lot Determination.....	50
<i>Division 2 – Permit Procedure</i>	51

I.	Who Reviews Permits.....	51
J.	Zoning Conformance, Fence, and Certificate of Occupancy/Change of Use Permit Procedure.	51
K.	Special Use Permit Procedure.	53
L.	Conditions.....	58
M.	Hearing Notices.	58
N.	Approval Period.	58
	<i>Division 3 – Annexation, Appeals and Variances.....</i>	<i>59</i>
O.	Annexation.	59
P.	Zoning Appeals.	59
Q.	Variances.	61
	<i>Division 4 – Amendments.....</i>	<i>64</i>
R.	Amendments.	64
S.	Administrative Reviews.	67
	<i>Division 5 – Hearing Procedures.....</i>	<i>67</i>
T.	Hearing Procedure.....	67
U.	Additional Hearing Procedures.....	69
V.	Hearings To Be Recorded.	69
W.	Decision Record.	69
	<i>Division 6 – Enforcement, Violations and Penalties.....</i>	<i>69</i>
X.	Certificate of Compliance.	69
Y.	Violations.	69
Z.	Responsibility For Violations.	70
AA.	Enforcement Process.....	70
BB.	Penalties.	71
CC.	Withhold Permit, Utilities Service or Other Development Authorization.....	71
	<i>Division 7 – Nonconformities and Existing Nuisances.....</i>	<i>72</i>
DD.	Nonconforming Uses, Buildings and Lots.....	72
EE.	Existing Nuisances.	73
	CHAPTER IV – PERFORMANCE STANDARDS.....	74
A.	What This Chapter Does.....	74
	<i>Division 1 – Protecting Flathead Lake and Other Natural Assets – Avoiding Natural Hazards....</i>	<i>74</i>
B.	Runoff Management.	74

C. Shoreline Buffers.	74
D. Hillside Development	76
E. Water Quality.	76
F. Air Quality.....	77
G. Hazardous Materials.....	77
H. Floodplain.....	77
I. RESERVED.	77
<i>Division 2 – Providing Adequate Infrastructure.....</i>	<i>77</i>
J. Municipal Utilities.....	77
K. Private Utilities.	77
L. Easements.	78
M. Vehicular Access.	78
N. Access Driveways.....	78
O. Off-Street Parking.....	78
P. Pedestrian Access.....	83
Q. Bicycle Access.	83
R. Circulation.....	84
S. Parks and Open Space.	84
T. Large Scale Development.	86
U. RESERVED.	87
<i>Division 3 – Ensuring Land Use Compatibility – Enhancing the Community’s Image.....</i>	<i>87</i>
V. Potential Nuisances.	87
W. Landscape.....	89
X. Recreational Vehicles.	99
Y. Accessory Dwelling Units.....	99
Z. Home Occupations.	100
AA. Bed and Breakfasts.....	101
BB. Multiple-Family Dwellings	102
CC. Cluster Development.....	103
DD. Wireless Communication Facilities.....	105
EE. Sexually Oriented Businesses	109
FF. Planned Unit Developments.....	109

CHAPTER V - REQUIRED IMPROVEMENTS	112
A. What This Chapter Does	112
B. Installation at Developer's Expense	112
C. Standards for Required Improvements	112
D. Construction Timing	112
E. Time of Installation/Development Agreement	112
F. Prerequisites to Entering a Development Agreement	112
G. Effect of Development Agreement	113
H. Guarantees	113
I. Inspection and Acceptance of Improvements	114
J. Warranty of Improvements	114
K. Continuing Maintenance Required	114
CHAPTER VI – SUBDIVISION REGULATIONS	116
A. What This Chapter Does	116
<i>Division 1 – General Provisions</i>	116
B. Construction Timing	116
C. Transfers of Title	116
D. Enforcement	116
E. Violation and Penalties	117
F. Amendment of Subdivision Regulations	117
<i>Division 2 – General Procedures</i>	117
G. Pre-application Process	117
H. Required Public Agency, Service Provider and Utility Contacts	118
I. Subdivision Application and Preliminary Plat Submittal	119
J. Element and Sufficiency Review	123
K. Applicable Regulations	123
L. Subdivision Variances	123
M. Public Hearings and Notification	124
N. Administration of Common Property or Facilities, Private Covenants	124
O. Subdivision Appeals	125
P. Final Plat Contents	126
Q. Final Plat Initial Review—Check Print Review	127

R.	Amending Approved Preliminary Plats Before Final Plat Approval.....	127
S.	Final Plat Application Submittal and Review.....	128
T.	Final Plat Filing.....	130
U.	Amending Filed Plats	130
V.	Subdivision Improvements Agreement.....	130
	<i>Division 3 – First Minor Subdivisions</i>	<i>131</i>
W.	Review Procedure for First Minor Subdivisions.	131
	<i>Division 4 – Major and Second or Subsequent Minor Subdivisions</i>	<i>138</i>
X.	Review Procedure for Major Subdivisions.	138
	<i>Division 5 – Exemptions from the Subdivision and Platting Act</i>	<i>148</i>
Y.	Exemptions from the Subdivision and Platting Act (MSPA).	148
	<i>Division 6 – Design and Improvement Standards.....</i>	<i>155</i>
Z.	Lands Unsuitable for Subdivision	155
AA.	Floodplain Provisions.....	155
BB.	Lots	156
CC.	Access (Streets and Roads, Pedestrian and Bicycle Facilities).....	158
DD.	Multi-Modal Traffic Impact Study Required.....	162
EE.	Blocks	163
FF.	Street / Road Naming and Addressing	163
GG.	Mail Delivery.....	163
HH.	School Bus Service	164
II.	Irrigation Easements (where applicable).....	164
JJ.	Disposition of Water Rights and Irrigation Related Operation and Maintenance Assessments.	165
KK.	Irrigation Plan.	165
LL.	Parks and Trails.....	167
MM.	Cluster Development.	167
NN.	Historical and Cultural Resources.....	167
OO.	Water Supply, Wastewater Treatment, Runoff/Stormwater Management and Solid Waste.	167
PP.	Phasing of Final Plats.	168
CHAPTER VII - DEFINITIONS		170
A.	What This Chapter Does.	170

B. Rules of Interpretation.....	170
C. Other Definitions.	170
ADMINISTRATIVE MATERIALS	181

CHAPTER I – PURPOSE, AUTHORITY, AND GENERAL PROVISIONS

- A. What This Chapter Does.** This chapter states the purpose of these regulations, identifies the statutes pursuant to which they are adopted, repeals conflicting previous regulations, establishes vested rights for developments approved prior to adoption of these regulations, and establishes rules for the interpretation of these regulations.

Division 1 – Purpose, Authority, Applicability and Compliance

- B. Purpose.** The purpose of these regulations is to promote the health, safety, morals and general welfare of the people of the City of Polson. Additionally, in accordance with 76-2-301, and 76-3-501, et seq., MCA, these regulations are intended to:

1. Secure safety from fire and other dangers;
2. Promote public health, safety, morals and general welfare;
3. Provide adequate light, air, water, sewerage, schools, parks, and other public requirements;
4. Lessen congestion on streets and highways and provide effective motorized and non-motorized transportation systems;
5. Promote compatible urban growth, including the character of each district and its peculiar suitability for particular uses;
6. Conserve the value of buildings and encourage the most appropriate use of the land;
7. Prevent overcrowding of the land;
8. Require development in harmony with the natural environment, and promote the preservation of open space and cluster development;
9. Protect the rights of property owners; and
10. Require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

The items listed in numbers 1 through 10 above are the general purposes of zoning and subdivision regulations as provided in Montana law. The regulations and standards in the Polson Development Code are intended to help achieve these purposes. The purposes listed above are not to be used to evaluate development proposals.

- C. Authority.** These regulations are adopted under the authority granted by 76-2-301, MCA, et seq., which authorized city zoning; and 76-3-501, MCA, which requires cities and counties to adopt subdivision regulations.

- D. Applicability.** These regulations apply to all development, public or private, within the city and surrounding area proposed for annexation unless otherwise expressly stated. Where development is exempt from these regulations, these regulations shall be used as non-binding guidelines.
- E. Relationship of These Regulations and Standards to the Polson Growth Policy.** The Polson Growth Policy provides the policy basis for these regulations and standards. The regulations and standards herein have been made in consideration of and in conformance with the Polson Growth Policy.
- F. Compliance Required.** No land shall hereafter be divided, combined, used or occupied, and no building, structure or part thereof shall hereafter be erected, constructed, reconstructed, razed, or structurally altered, and no development shall commence unless it is in conformity with these regulations.

Division 2 – Transition from Previous Regulations

- G. Conflicting Ordinances and Resolutions.** The 1993 Polson Development Code is repealed and replaced with this 2016 Polson Development Code. If the provisions of these regulations are inconsistent with those of the state or federal government, the more restrictive shall control. If the provisions of these regulations are inconsistent with one another, or if they conflict with the provisions of other ordinances or regulations of the city, the more restrictive shall control unless otherwise expressly stated. Headings and illustrations are provided for convenience and reference only. In the case of any difference of meaning or implication between the text of this code and any heading, table or drawing, the text controls.
- H. Vested Rights.** A vested right is the right to proceed with development in compliance with the previous regulations (which are repealed by subsection I.G, above), or the right to proceed in compliance with these regulations, pursuant to a development agreement, as provided in Chapter V.
1. A vested right to proceed with development initiated prior to the effective date of these regulations shall be established only by:
 - a. Having obtained a permit in compliance with the previous regulations (such vested rights expire with the permit); or
 - b. For subdivisions in the preliminary plat application and review phase, the subdivision administrator issuing notice that the preliminary plat application is sufficient for review (76-3-604, MCA); or
 - c. Having recorded a final plat or obtained approval of a preliminary plat in compliance with the previous regulations. Recording a final plat establishes a vested right to develop and sell lots precisely as they are described on that plat. Prior approval of a preliminary plat establishes a vested right to proceed with final platting and development of the subdivision as approved. Such vested rights expire with termination of the preliminary plat approval. Development or subsequent division of the lots shown on a final plat must comply with these regulations.
 2. Vested rights to proceed with development in compliance with these regulations (which may be amended) shall be established only by obtaining a permit or by obtaining a notice of preliminary plat application sufficiency. Such vested rights expire with the permit, the subdivision approval period or, where one is approved, the development agreement. Vested rights are established for a

development as it was approved. Any material change must be in compliance with the then current regulations.

- I. **Private Agreements.** Adoption of these regulations does not nullify easements, covenants, and similar private agreements, but where any such agreement imposes requirements less restrictive than those adopted here, the requirements of these regulations apply. Where the provisions of any private agreements are more restrictive or impose higher standards than these regulations, the city has no duty to enforce such restrictions or advise of their existence. The city may enforce private restrictions if they are a party to such restrictions, if such restrictions were required by the city during the land permitting and development process in order to meet the requirements of these regulations.

Division 3 – Interpretation

- J. **Meaning and Intent.** The language of the Polson Development Code must be read literally. These regulations are no more or less strict than stated. Words and terms expressly defined in these regulations have specific meanings assigned, unless the context expressly indicates another meaning.
- K. **Responsibility for Interpretation.** In the event a question arises concerning any provision or the application of any provision of these regulations, the Polson Building and Planning Official, acting as the zoning and subdivision administrator (the administrator) and in consultation with the municipal attorney's office as may be necessary, shall be responsible for such interpretation and shall look to the overall intent of these regulations and the policy statements of specific chapters for guidance. In interpreting these regulations, the administrator may use a variety of sources. The administrator shall provide such interpretations in writing upon request and keep a permanent record of said interpretations. The responsibility for interpretation shall not be construed as overriding the responsibilities given to any commission, board, or official named in other parts of these regulations. Any person who disputes the administrator's interpretation of text may appeal to the city board of adjustment (BOA) for zoning matters (Chapter III.Q.) and the governing body for subdivision matters (Chapter VI.).
- L. **Delegation of Authority.** When a provision in these regulations requires a department supervisor to perform some act or duty, it shall be construed to authorize that individual to designate, delegate and authorize subordinates to perform the required act or duty, performed under supervision, unless the terms of the provision or section specify otherwise.
- M. **Burden of Proof.** The responsibility for demonstrating compliance with these regulations is the developer's. No incomplete or insufficient application for a permit may be accepted, and "insufficient information to determine compliance" shall be proper grounds for the rejection of an application by the administrator, board, or city commission.
- N. **Requirements Minimum.** All requirements of these regulations shall be interpreted as the minimum necessary to protect the public health, safety and general welfare. These regulations are designed for consistency with the growth policies and should be interpreted to achieve their goals, objectives, policies and strategies.
- O. **Computation of Time.** When a time period is specified in these regulations, the first day shall be the day after the event that triggers the time clock to start. For example, if an action is to be taken within 35

working days of the date an application is deemed to be sufficient for review, the time clock starts on the first business day after the date the application is deemed sufficient.

- P. Severability.** If any requirement of these regulations, or their application to particular circumstances, is held to be invalid by a court of competent jurisdiction, the remaining requirements and application of these regulations to other circumstances shall be unaffected.
- Q. Effective Date.** These regulations shall become effective May 5, 2016.

CHAPTER II – ZONING DISTRICTS

- A. What This Chapter Does.** This chapter establishes zoning districts in the city jurisdictional area; adopts an official zoning map; provides for permitted and special uses; and includes specification and performance standards for each district.

Division 1 – Zoning Districts Established

- B. Zoning Districts.** A zoning district is a geographic area within which development of certain uses and buildings is permitted upon approval of a zoning conformance permit (see III.J) and certain other uses and buildings may be developed upon approval of a special use permit (see III.K).

The following zoning districts and their boundaries, as shown on the Polson City Zoning Districts Map, are established:

1. Low Density Residential (LRZD);
2. Medium Density Residential (MRZD);
3. Old Town Zoning District (OTZD);
4. Mixed Residential (XRZD);
5. Transitional (TZD);
6. Resort (RZD);
7. Highway Commercial (HCZD);
8. Central Business (CBZD);
9. General Commercial-Industrial (CIZD);
10. Recreational Vehicles and General Campgrounds (RVZD); and
11. Hospital Mixed (HMZD).

- C. Overlay Districts.** An overlay district modifies the regulations applicable in the zoning districts “over” which it is mapped. The following overlay districts and their boundaries, as shown on the Polson City Zoning Districts Map, are established:

1. Airport Safety (ASOD)
2. Wellhead Protection (WPOD), and
3. Resort Residential (RROD)

Portions of these overlay districts are established in areas outside the municipal boundaries of the city to address likely overlay zoning with future jurisdiction of the city upon annexation. The overlay districts are shown on the zoning map to inform the landowners that upon annexation into the City of Polson, the applicable overlay district would apply to the mapped areas.

- D. Zoning Map.** The Polson City Zoning Districts Map is adopted, by reference, as part of these regulations. The most recently adopted, official copy of that map shall be maintained for public inspection at the office of the administrator.
- E. District Boundaries.** Any person who disputes the location of a zoning district boundary, as interpreted by the administrator, may appeal the administrator’s decision to the City Board of Adjustment (BOA)

using the procedure of III.P. When definite distances are not shown on the zoning district map, the following rules apply:

1. Boundaries indicated as approximately following the right-of-way or centerlines of streets, highways, trails, pathways or alleys shall be construed to follow such rights-of-way or centerlines;
2. Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;
3. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines; and
4. Boundaries indicated as approximately following centerlines of streams, rivers, canals, irrigation ditches or other bodies of water or other physical features shall be construed as to follow such centerlines.

F. Land Use. It is the intent of this section to group similar or compatible land uses into specific zoning districts, either as permitted or special uses. Evaluation of uses shall be as follows:

1. The administrator shall determine if a use not listed is materially similar to a permitted or special use listed in that chapter. Interpretations may be appealed to the city BOA (see III.P).
2. Materially similar means the use provides a similar function, occurs within a similar structure or setting, and has a similar scale to a permitted or special use listed in that chapter.
3. Land uses deemed not to be materially similar to a permitted or special use shall be prohibited unless a variance is received (see III.Q.) or amendment to these regulations is made (see III.R.).

G. Uses Preempted by State Statute. Uses that are required to be permitted in a zoning district by state statute shall be permitted in accordance with state law whether or not the use is included in this chapter.

H. Use Table

The table below provides an illustrative look at land uses allowed in the various zoning districts. The district regulations in this Chapter provide more detail. In case of a conflict between the table and the district regulations, the district regulations prevail. Specific questions and interpretations regarding land uses and districts should be directed to the administrator.

Key

P = Permitted Use. A land use allowed as-of-right in the district, subject to compliance with performance and specifications standards and other requirements.

S = Special Use. A land use that may be approved in accordance with the review procedure in Chapter III.K.

- = A land use that is not permitted in the specific district without a variance (Chapter III.Q) or a zoning amendment (Chapter III.R)

Table II.1

Land Use/Activity	LRZD	MRZD	OTZD	XRZD	TZD	RZD	HCZD	CBZD	CIZD	RVZD	HMZD	Standards/Notes
Residential												
Single-family residential	P	P	P	P	P	P	-	-	-	-	P	
Two-family dwelling	-	P	P	P	P	P	-	-	-	-	P	
Multiple-family up to 4 units per structure	-	P	P	P	P	P	-	S	-	-	P	See Performance standards IV.BB.
Multiple-family 5-8 units per structure	-	S	S	P	S	P	-	S	-	-	S	See IV.BB, also some districts have performance standards for MF dwellings/complexes
Multiple-family up to 16 units per structure	-	-	-	P	S	S	-	S	-	-	-	See IV.BB, also some districts have performance standards for MF dwellings/complexes
Mobile home park	-	S	-	-	-	S	-	-	-	-	-	See district specific performance standards
Community residential facilities (8 or fewer residents)	P	P	P	P	P	P	-	-	-	-	P	Considered an accessory use in residential districts. See 76-2-412, MCA.
Community residential facilities (9 or more residents)	S	S	S	S	-	S	-	-	-	-	S	
Cluster development	P	-	-	-	-	P	-	-	-	-	-	Performance standards IV.CC
Accessory apartment in residences	P	P	P	P	P	P	-	P	P	-	P	Either separate dwelling or apartment allowed, not both. See IV.Y
Separate accessory dwelling on residential lots	P	P	-	P	-	P	-	-	-	-	P	Either separate dwelling or apartment allowed, not both. See IV.Y
Accessory dwelling on commercial / industrial lots	-	-	-	-	P	P	P	P	P	P	P	Only one accessory dwelling allowed. See IV.Y
Family and group day care	P	P	P	P	P	P	-	-	-	-	P	Permitted as an accessory use in all residential districts
Public/Civic												
Public parks & recreation areas	P	P	P	P	P	P	P	P	S	P	P	
Private parks & recreation areas	S	S	-	P	S	S	S	-	S	S	S	
RV Parks, Campgrounds	-	-	-	-	-	S	-	-	-	P	-	
Religious Institutions	S	S	S	S	S	-	P	S	P	-	S	
Schools	S	S	S	S	S	-	-	-	-	-	S	
Hospital complexes	-	-	-	-	-	-	-	-	-	-	S	
Cemeteries	S	S	-	-	-	-	-	-	-	-	-	
Government, public safety/ service, libraries, non-profits	-	-	-	-	-	-	-	P	P	-	P	

Land Use/Activity	LRZD	MRZD	OTZD	XRZD	TZD	RZD	HCZD	CBZD	CIZD	RVZD	HMZD	Standards/Notes
Commercial/Industrial												
Home occupation (≤ 1 employee)	P	P	P	P	P	P	-	P	-	-	P	See performance standards IV.Z
Home occupation (2-4 employees)	S	S	S	S	S	-	-	-	-	-	S	See performance standards IV.Z
Bed & breakfasts	S	S	S	S	P	P	-	-	-	-	P	See performance standards IV.AA
Minor Utility Installations	P	P	P	P	P	P	P	P	P	P	P	
Day Care Centers	S	S	S	S	S	-	P	P	-	-	S	See district performance standards
Day care for employees' children	-	-	-	-	P	P	P	P	P	-	P	Accessory use to any commercial or industrial use
Lake-oriented resort commercial	-	-	-	-	-	S	-	-	-	-	-	See RZD district text for standards
Mixed commercial/residential	-	-	-	-	S	S	-	P	-	P	-	See CBZD, TZD & RZD performance standards
Highway-oriented commercial	-	-	-	-	-	-	P / S	-	P	-	-	See HCZD regulations
Commercial, general	-	-	-	-	S	-	-	P	P / S	P / S	-	Limited comm. allowed in TZD and RVZD. See CIZD regulations
Industrial, general	-	-	-	-	-	-	-	-	P / S	-	-	See CIZD regulations
Industrial, light	-	-	-	-	-	-	S	-	P / S	-	-	See CIZD regulations
Professional and medical offices, support services	-	-	-	-	P	-	P	P	P / S	-	P	Limited commercial allowed in TZD and HMZD
Wireless communication facilities	S	S	S	S	S	S	S	S	S	S	S	Performance standards IV.DD.
Agricultural and Resource												
Continuing agricultural and mining	-	-	-	-	-	-	-	-	S	-	-	
New mining operations	-	-	-	-	-	-	-	-	S	-	-	
Processing of agricultural and mining products	-	-	-	-	-	-	-	-	S	-	-	
Community gardens	P	P	P	P	-	P	-	-	P	-	P	

Division 2 – Zoning District Regulations

I. Low Density Residential Zoning District

1. **Purpose.** The Low Density Residential Zoning District (LRZD) is intended to provide for neighborhoods of single-family dwellings that are typically connected to municipal utilities.
2. **Land Use.** The permitted and special uses allowed in the LRZD shall be as shown in Table II.2. All uses not explicitly permitted are prohibited.

Table II.2 LRZD Land Use

Permitted Uses	Special Uses
Single-family dwelling	Religious institutions, schools
Accessory uses customarily associated with the permitted and special uses	Wireless communication facilities (see IV.DD)
Day care homes	Day care centers (13+ children)
Home occupations up to 1 on site employee (see IV.Z.)	Home occupations 2-4 on site employees (see IV.Z)
Community residential facilities, 8 or fewer residents	Community residential facilities, 9 or more residents
Minor utility installations (III.C.6.)	Bed and breakfasts (see IV.AA.)
Public parks and recreation areas	Private parks and recreation areas
Cluster development (see IV.CC.)	Cemeteries
Community gardens	

3. **Specification Standards.** The specification standards for the LRZD appear in Table II.3.

Table II.3. LRZD Specification Standards

Standards	Specifications	Standards	Specifications
Minimum lot size	7,000 square feet	Minimum lot width at front property line	50 feet
Minimum front yard setback	30 feet	Minimum rear yard setback	15 feet
Minimum side yard setback	5 feet	Maximum building height	35 feet
Maximum lot coverage	40%, 45% for lots in cluster development *		
Minimum setback from lake, river or stream	50 feet, and must include a shoreline buffer (see IV.C)		

*Maximum lot coverage is affected by slope. The maximum lot coverage given here is for slopes of 0-8%. See IV.D. for the maximum lot coverage permitted on steeper slopes.

4. **Performance Standards.** All developments shall comply with the performance standards of Chapter IV., as applicable, and the following additional performance standards.
 - a. **Outdoor Storage.** See also IV.V., Potential Nuisances. Outdoor storage shall be permitted anywhere it is fully screened from public view and adjoining properties. Outdoor storage that is not fully screened shall be permitted anywhere in rear yards, but not in front yards, or any

required side setback areas. This permits storage to the side of a dwelling that has a larger than required side setback area, except that:

- i. Construction equipment and materials may be stored in front, rear and side yards (including setback areas) during the course of work for which a permit has been approved in compliance with these regulations. This exception expires with the permit or upon issuance of a certificate of compliance.
 - ii. Vehicles and watercraft with current registrations may be parked in front, rear and required side yards (including setback areas). Parked vehicles or watercraft shall not block vision at intersections or where driveways enter public streets.
- b. Accessory Buildings.** Accessory buildings shall be permitted in rear yards, but not in front yards or required side setback areas. However, on lots abutting Flathead Lake or the Flathead River, accessory buildings may be placed in front yards in compliance with the required setback distance.
- c. Day Care Centers.** Day care centers shall:
- i. Be registered with the Montana Department of Family Services;
 - ii. Provide off-street parking and loading areas in compliance with IV.O.;
 - iii. Retain a residential appearance, or the appearance of a special use (like a religious institution or school); and
 - iv. Provide a minimum six-foot high opaque wood or masonry fence and a landscape buffer between all outdoor play areas and adjacent dwellings (see IV.W.).
 - v. Day care centers may display a single non-illuminated wall sign of no more than 16 square feet (as provided in sign ordinance).
- 5. Overlay Districts.** All developments shall comply with the additional requirements imposed by overlay districts. The Resort Residential Overlay District applies to a portion of this district.

J. Medium Density Residential District

- 1. Purpose.** The Medium Density Residential Zoning District (MRZD) is intended to permit the development of single-family, two-family and multiple-family dwellings with municipal services.
- 2. Land Use.** The permitted and special uses allowed in the MRZD shall be as shown in Table II.4. All uses not explicitly permitted are prohibited.

Table II.4 MRZD Land Use

Permitted Uses	Special Uses
Single-family and two-family dwelling	Multiple-family dwelling, 5 to 8 units per structure
Multiple-family dwelling, up to 4 units per structure	Mobile home parks
Accessory uses customarily associated with the permitted and special uses	Religious institutions – day care centers (13+ children) - schools
Community residential facilities, 8 or fewer residents – day care homes	Community residential facilities, 9 or more residents
Community gardens	Bed and breakfasts (see IV.AA.)
Public parks and recreation areas	Private parks and recreation areas
Home occupations up to 1 on site employee in compliance with IV.Z	Home occupations 2-4 on site employees in compliance with IV.Z
Minor utility installations (see III.C.6).	Cemeteries
	Wireless communication facilities (see IV.DD)

- 3. Specification Standards.** The specification standards for the MRZD appear in Table II.5.

Table II.5 MRZD Specification Standards

Standards	Specifications	Standards	Specifications
Minimum lot or mobile home space size	6,000 square feet Townhouse – 3,500 sf	Minimum area in addition to the base minimum of 6,000 sf for each additional unit in two-family and multiple family dwellings	1,000 square feet
Minimum lot width, at front property line	40 feet Townhouse – 25 feet	Minimum front yard setback	Along arterials – 40 feet Other streets – 25 feet* Building wall – 20 feet
Minimum rear yard setback	Single, two-family – 15 ft Multiple family – 20 ft	Minimum side yard setback	Single, two-family – 5 ft Multiple-family – 10 ft Common wall – 0 ft
Maximum height	35 feet	Minimum setback from lake, river or stream	50 feet
Parking spaces	See IV.O.	Maximum lot coverage	55% **

*The front setback may be reduced to 15 feet along internal roads serving multiple-family dwelling complexes and mobile home parks. **Maximum lot coverage is affected by slope. The maximum lot coverage given here is for slopes of 0-8%. See IV.D. for the maximum lot coverage permitted on steeper slopes.

4. Performance Standards. All developments shall comply with the performance standards of Chapter IV, as applicable, including performance standards for multi-family dwellings (IV.BB.), and the following additional performance standards.

- a. **Outdoor Storage.** See also IV.V., Potential Nuisances. Outdoor storage shall be permitted anywhere it is fully screened from public view and adjoining properties. Outdoor storage that is not fully screened shall be permitted anywhere in rear yards, but not in front yards, or any required side setback areas. This permits storage to the side of a dwelling that has a larger than required side setback area, except that:
 - i. Construction equipment and materials may be stored in front, rear and side yards (including setback areas) during the course of work for which a permit has been approved in compliance with these regulations. This exception expires with the permit or upon issuance of a certificate of compliance.
 - ii. Vehicles and watercraft with current registrations may be parked in front, rear and required side yards (including setback areas). Parked vehicles or watercraft shall not block vision at intersections or where driveways enter public streets.
- b. **Accessory Buildings.** Accessory buildings shall be permitted in rear yards, but not in front yards or required side setback areas.
- c. **Day Care Centers.** Day care centers shall:
 - i. Be registered with the Montana Department of Family Services;
 - ii. Provide off-street parking and loading areas in compliance with IV.O.;
 - iii. Retain a residential appearance, or the appearance of a special permit use (like a religious institution or a school)
 - iv. Provide a minimum six-foot high opaque wood or masonry fence or a 20-foot landscaped buffer between all outdoor play areas and adjoining dwellings (see IV.W.).
 - v. Day care centers may display a single wall sign of no more than 16 square feet and external lighting only (as provided in sign ordinance).
- d. **Multiple-Family Dwelling Complexes.** Multiple-family dwelling complexes include more than eight units and shall:
 - i. Recommend direct access onto a collector or arterial street, or otherwise be located where they will not channel traffic onto local residential streets;
 - ii. Provide all improvements required by IV.BB, Performance Standards for Multiple-Family Dwellings; and

- iii. Include site improvements that are maintained by the owner or an owners association.
- e. **Mobile Home Parks.** Mobile home parks do not permit short-term (less than 30 days) occupancy, and shall:
 - i. Have direct access onto a collector or arterial street, or otherwise be located where they will not channel traffic onto local residential streets; and
 - ii. Provide all improvements required by Chapter IV Division 2, with internal improvements being maintained by the owner or operator, as applicable.
 - iii. All mobile home parks must be licensed by the Montana Department of Public Health and Human services.
- 5. **Overlay Districts.** All developments shall comply with the additional requirements imposed by overlay districts. The Resort Residential Overlay District applies to a portion of this district.

K. Old Town Zoning District

- Purpose.** The Old Town Zoning District (OTZD) is intended to permit the development of single-family, two family and multiple-family dwellings with municipal services in accordance with the City's historic residential development pattern.
- Land Use.** The permitted and special uses allowed in the OTZD shall be as shown in Table II.6. All uses not explicitly permitted are prohibited.

Table II.6 OTZD Land Use

Permitted Uses	Special Uses
Single-family and two-family dwelling	Multiple-family dwelling, 5 to 8 units per structure
Multiple-family dwelling, up to 4 units per structure	Religious institutions – day care centers (13+ children) - schools
Community residential facilities, 8 or fewer residents – day care homes	Community residential facilities, 9 or more residents
Accessory uses customarily associated with the permitted and special uses, except as limited by 4.b.ii on the following page	Bed and breakfasts (see IV.AA.)
Public parks and recreation areas	Wireless communication facilities (see IV.DD)
Home occupations up to 1 on site employee in compliance with IV.Z	Home occupations 2-4 on site employees in compliance with IV.Z
Minor utility installations (see III.C.6).	
Community gardens	

- Specification Standards.** The specification standards for the OTZD appear in Table II.7.

Table II.7 OTZD Specification Standards

Standards	Specifications	Standards	Specifications
Minimum lot size	7,000 square feet	Lots area in addition to the base minimum of 7,000 sf for each additional unit in two-family and multiple family dwellings	1,000 square feet
Minimum lot width, at front property line	50 feet	Minimum front yard setback	Along arterials – 40 feet Other streets – 25 feet
Minimum rear yard setback	Single, two-family – 15 ft Multiple family – 20 ft	Minimum side yard setback	Single, two-family – 5 ft Multiple-family – 10 ft
Maximum height	35 feet	Minimum setback from lake, river or stream	50 feet
Parking spaces	See IV.O.	Maximum lot coverage	55%*

*Maximum lot coverage is affected by slope. The maximum lot coverage given here is for slopes of 0-8%. See IV.D. for the maximum lot coverage permitted on steeper slopes.

4. Performance Standards. All developments shall comply with the performance standards of Chapter IV, as applicable, including performance standards for multi-family dwellings (IV.BB.), and the following additional performance standards.

a. **Outdoor Storage.** See also IV.V., Potential Nuisances. Outdoor storage shall be permitted anywhere it is fully screened from public view and adjoining properties. Outdoor storage that is not fully screened shall be permitted anywhere in rear yards, but not in front yards, or any required side setback areas. This permits storage to the side of a dwelling that has a larger than required side setback area, except that:

- i. Construction equipment and materials may be stored in front, rear and side yards (including setback areas) during the course of work for which a permit has been approved in compliance with these regulations. This exception expires with the permit or upon issuance of a certificate of compliance.
- ii. Vehicles and watercraft with current registrations may be parked in front, rear and required side yards (including setback areas). Parked vehicles or watercraft shall not block vision at intersections or where driveways enter public streets.

b. **Accessory Buildings.**

- i. Accessory buildings shall be permitted in rear yards but not in front yards or required side setback areas.
- ii. Detached accessory dwelling units, including an apartment above a detached garage, are not allowed in this district.

c. **Day Care Centers.** Day care centers shall:

- i. Be registered with the Montana Department of Family Services;
- ii. Provide off-street parking and loading areas in compliance with IV.O.;
- iii. Retain a residential appearance, or the appearance of a special use (like a religious institution or a school)
- iv. Provide a minimum six-foot high opaque wood or masonry fence or a 20-foot landscaped buffer between all outdoor play areas and adjoining dwellings (see IV.W.).
- v. Day care centers may display a single wall sign of no more than 16 square feet and external lighting only (as provided in sign ordinance).

5. Overlay Districts. All developments shall comply with the additional requirements imposed by overlay districts.

L. Mixed Residential District

1. **Purpose.** The Mixed Residential Zoning District (XRZD) is intended to provide for the continuation of a residential neighborhood with single-family, two family and multi-family structures that are connected to municipal services.
2. **Land Use.** The permitted and special uses allowed in the XRZD district shall be shown in Table II.8. All uses not explicitly permitted are prohibited.

Table II.8 XRZD Land Use

Permitted Uses	Special Uses
Single-family and two-family dwelling	Religious Institutions
Multi-family dwelling, up to 16 units per structure (see IV.BB)	Multi-family dwelling, 17+ units per structure (see IV.BB)
Common areas, recreational buildings and uses, club houses, public and private parks and recreation areas	Day care centers (13+ children) and elementary schools
Community residential facilities, 8 or fewer residents – day care homes	Community residential facilities, 9 or more residents
Accessory uses customarily associated with the permitted and special permit uses	Bed and breakfasts (see IV.AA)
Home occupations up to 1 on site employee in compliance with IV.Z.	Home occupations 2 - 4 on site employees in compliance with IV.Z.
Minor utility installations (see III.C.6.)	Wireless communication facilities (see IV.DD)
Community gardens	

3. **Specification Standards.** The specification standards for this district are shown in Table II.9.

Table II.9 XRZD Specification Standards

Standards	Specifications	Standards	Specifications
Minimum lot size (square feet)	Single family - 5,900 Two-family – 6,900 Multi-family - 3,400 Townhouse – 3,500	Lot area in addition to the base minimum for each additional unit in two-family and multi-family dwellings	1,000 square feet
Minimum lot width at front property line	Single, two-family, multi-family family - 60 feet Townhouse – 25 feet	Minimum front yard setback	Building wall – 20 feet Open porches, decks – 10 feet
Minimum rear yard setback	15 feet	Minimum side yard setback	Side yard – 5 feet Common wall – 0 feet
Maximum height	35 feet	Maximum lot coverage	Single family or two-family lot 10,000 square feet or greater – 35%* Single family lot <10,000 square feet – 55%* Multi-family – 65%*
Parking spaces	See IV.O.	Minimum setback from lake, river or stream	50 feet

*Maximum lot coverage is affected by slope. The maximum lot coverage given here is for slopes 0-8%. See IV.D for the maximum lot coverage permitted on steeper slopes.

4. **Performance Standards.** All developments shall comply with the performance standards of Chapter IV, including performance standards for multi-family dwellings, as applicable, and the following additional performance standards:

- a. **Special standard:** Streets having a right-of-way width of 40 feet and a length of 200' or less shall not be required to provide sidewalks in this district.
- b. **Outdoor Storage.** See also IV.V., Potential Nuisances. Outdoor storage shall be permitted anywhere it is fully screened from public view and adjoining properties. Outdoor storage that is not fully screened shall be permitted anywhere in rear yards, but not in front yards, or any required side setback areas. This permits storage to the side of a dwelling that has a larger than required side setback area, except that:
 - i. Construction equipment and materials may be stored in front, rear and side yards (including setback areas) during the course of work for which a permit has been approved in compliance with these regulations. This exception expires with the permit or upon issuance of a certificate of compliance.

- ii. Vehicles and watercraft with current registrations may be parked in front, rear and required side yards (including setback areas). Parked vehicles or watercraft shall not block vision at intersections or where driveways enter public streets.
- c. **Accessory Buildings.** Accessory buildings shall be permitted in rear yards, but not in front yards or the required side setback areas (this permits accessory buildings in side yards that are larger than the required setback).
- d. **Day Care Centers.** Day care centers shall:
 - i. Be registered with the Montana Department of Family Services;
 - ii. Provide off-street parking and loading areas in compliance with IV.O.;
 - iii. Retain a residential appearance, or the appearance of a special use (like a religious institution or a school)
 - iv. Provide a minimum six-foot high opaque wood or masonry fence or a 20-foot wide landscape buffer between all outdoor play areas and adjoining dwellings (see IV.W.).
 - v. Day care centers may display a single non-illuminated wall sign of no more than 16 square feet (as provided in sign ordinance).
- 5. **Overlay Districts.** All developments shall comply with the additional requirements imposed by overlay districts. The Resort Residential Overlay District applies to a portion of this district.

M. Transitional Zoning District

- 1. Purpose.** The Transitional Zoning District (TZD) is intended to provide for a well-planned transition from predominantly single-family residential to higher density residential, limited-scale commercial, and mixed uses in specific areas predominantly located near the central business district. Transitional developments must comply with performance standards designed to protect the remaining residences.
- 2. Land Use.** The permitted and special uses allowed in the TZD shall be as shown in Table II.10. All uses not explicitly permitted are prohibited.

Table II.10. TZD Land Use

Permitted Uses	Special Uses
Single-family dwelling and two-family dwelling	Multiple-family dwelling, 5 to 16 units per structure
Multiple-family dwelling up to 4 units per structure	Limited commercial uses, as provided in 4.b., below
Accessory uses customarily associated with the permitted and special uses	Day care centers, in compliance with 4.d., below
Home occupations up to 1 on site employee in compliance with IV.Z	Home occupations 2-4 or more on site employees in compliance with IV.Z
Minor utility installations (see III.C.6.)	Religious Institutions and schools
Public parks and recreation areas	Private parks and recreation areas
Bed and breakfasts (see IV.AA)	Wireless communication facilities (see IV.DD)
Community residential facilities, 8 or fewer residents – day care homes	

3. Specification Standards. The specification standards for the TZD appear in Table II.11.

Table II.11. TZD Specification Standards

Standards	Specifications	Standards	Specifications
Minimum lot size	Permitted uses and non-residential special uses 5,000 square feet Special residential uses – 4,000 square feet	Lot area in addition to the base minimum for each for each additional unit in two-family and multiple-family dwellings	1,000 square feet
Minimum lot width, at front property line	40 feet	Minimum front yard setback	20 feet*
Minimum rear yard setback	15 feet if not abutting an alley 5 feet if abutting an alley	Minimum side yard setback	Single- and two-family residential and commercial – 5 feet Multiple-family residential- 10 feet
Maximum height	35 feet	Maximum lot coverage	65% Block conversions – 75%**
Parking spaces	See performance standards below and in IV.O.	Minimum setback from lake, river or stream	50 feet

*The front setbacks may be reduced to 15 feet along internal roads serving multiple-family dwelling complexes.

**Maximum lot coverage is affected by slope. The maximum lot coverage given here is for slopes of 0-8%. See IV.D. for the maximum lot coverage permitted on steeper slopes.

4. Performance Standards. All developments shall comply with the performance standards of Chapter IV, as applicable, and these additional performance standards.

a. Transition to Multiple-Family Dwellings. Multiple-family dwellings with up to 4 units per structure are a permitted use in the TZD. Multiple-family dwellings shall comply with the performance standards for the MRZD and detailed performance standards for multiple-family dwellings (IV.BB).

b. Transition to Commercial Uses: Residential Conversions. A residential conversion is the conversion of a single existing dwelling to commercial use.

i. Land Use. The limited commercial uses permitted shall be compatible with neighboring residences. They shall retain a residential appearance and scale, be limited to the signage requirements of the sign ordinance and generate low to moderate levels of activity. Examples of the commercial uses that may be appropriate in the TZD include: i. retail sale of clothing and locally produced arts, crafts and foodstuffs; ii. retail coffee and tea shops, confectioneries and bakeries; iii. book and stationery stores; iv. retail florist; v. gift shops; vi. insurance and real estate offices; vii. beauty and barber services; vii. legal and other professional services; ix. the offices of civic organizations and x. travel agencies.

- ii. **Operating Hours.** Public operating hours shall begin no earlier than 8:00 a.m. and end no later than 10:00 p.m.
- iii. **Landscaping.** Landscaping shall meet the requirements of IV.W.
- iv. **Side and Rear Yards.** A minimum 6 foot high opaque wood fence or masonry wall shall be installed and maintained along the side and rear property lines that adjoin dwellings. The city may also require supplemental plantings to protect the privacy and enjoyment of residential neighbors. Rear yards may be used as outdoor dining or display areas, but shall be shielded from view.
- v. **Front Yard.** The front yard shall be left unfenced, or if one is existing, or in conformance with neighboring properties, with a low, open fence (like a picket fence) or hedge. No commercial use shall be made of the front yard, except during business hours.
- vi. **Architecture.** A residence being converted to commercial use may be remodeled or expanded, in compliance with these regulations and the City's fire and building codes, but such activity shall retain a residential appearance and scale. A maximum 3,000 square foot single use commercial structure is allowed; or 3,000 square foot building footprint for a mixed-use building or a live-work unit, so long the building does not exceed the maximum height requirement in Table II.11.
- vii. **Parking.** Residential development shall provide off-street parking in compliance with Table IV.2. Customers and employees may utilize public street areas.
- viii. **Signage.** All signs shall meet the requirements of the sign ordinance.
- c. **Block Conversions.** A block conversion is the development of commercial or mixed commercial and multiple-family dwellings on at least one-half of a platted block.
 - i. **Land Use.** Block conversions involve a higher intensity of commercial use, but must still respect neighboring residences. Examples of additional uses that may be appropriate in a block conversion in the TZD include: i. retail apparel and accessories; ii. Retail electronics – but not including installation of automotive sound systems); iii. eating and drinking places – but not including drive-in restaurants); iv. other retail uses that do not require large outdoor sales areas, outdoor storage, or drive-in service; v. finance, insurance, and real estate services; vi. Personal services such as laundering, photography, beauty and barber shops, apparel alteration and repair, and funeral and crematory services; and vii. professional services such as medical and health, law, engineering, and surveying, education, research and accounting.
 - ii. **Landscape.** There shall be a coherent landscape plan for the entire development. Landscaping will not retain its residential character with a maximum 75% lot coverage, but should retain functional existing vegetation to

the extent possible, and utilize landscape design themes from the surrounding residential neighborhood. See IV.W. for landscape requirements.

- iii. **Architecture.** The buildings in the block conversion shall present a coherent appearance and utilize themes from the surrounding residential neighborhood.
 - iv. **Outdoor Sales and Storage.** Limited outdoor sales and open dining areas, shall be permitted during business hours. All storage except temporary storage of construction materials and equipment being used for work in progress, shall be shielded from view using a structure, privacy fence or landscaping.
 - v. **Parking.** Residential development shall provide off-street parking in compliance with Table IV.2. Customers and employees may utilize public street areas.
 - vi. **Signage.** All signs shall meet the requirements of the sign ordinance.
- d. **Day Care Centers.** Day care centers shall:
- i. Be registered with the Montana Department of Family Services;
 - ii. Provide off-street parking and loading areas in compliance with IV.O.;
 - iii. Retain a residential appearance, or the appearance of a special use like a religious institution or a school;
 - iv. Provide a minimum six-foot high opaque wood or masonry fence or a 20-foot wide landscaped buffer between all outdoor play areas and adjoining dwellings (see IV.W.).
 - v. Day care centers may display a single building-mounted sign of no more than 16 square feet and 4-foot maximum projection, external lighting only (as provided in sign ordinance).
5. **Overlay Districts.** All developments shall comply with any additional requirements imposed by overlay districts.

N. Resort Zoning District

- 1. Purpose.** The Resort Zoning District (RZD) is intended to permit mixed higher density residential and resort commercial development primarily along the Flathead Lake and Flathead River shoreline. Because the lakeshore and riverfront is so critical to the City's prosperity and quality of life, unique uses in the RZD require a special use permit.
- 2. Land Use.** The permitted and special uses allowed in the RZD shall be as shown in Table II.12. All uses not explicitly permitted are prohibited.

Table II.12 RZD Land Use

Permitted Uses	Special Uses
Single family and two-family dwelling	Lake- and river-oriented resort commercial uses, campgrounds
Multiple-family dwelling up to 8 units per structure	Multiple-family dwelling, 9 to 16 units per structure
Public parks and recreation areas	Private parks and recreation areas
Accessory uses customarily associated with the permitted and special uses	Mobile home parks
Minor utility installations (see III.C.6.)	Mixed resort commercial (see 4. c. below) and multiple-family residential uses*
Bed and breakfasts (see IV.AA.)	Wireless communication facilities (see IV.DD)
Community residential facilities, 8 or fewer residents – day care homes	Community residential facilities, 9 or more residents
Home occupations up to 1 on site employee in compliance with IV.Z	Hotels
Cluster development (see IV.CC.)	
Community gardens	

- 3. Specification Standards.** The specification standards for the RZD appear in Table II.13. In addition, special uses with lake facilities may be required to include a shore side pumpout station for sewage disposal. Note also that a lot coverage incentive is offered for provision of public access to the shoreline: see 4.e., below.

Table II.13 RZD Specification Standards

Standards	Specifications	Standards	Specifications
Minimum lot or mobile home space size	None – development must meet lot coverage, landscaping, building height, parking, access and all other performance standards.		
Minimum lot width at front property line	40 feet	Minimum front yard setback	Along arterials – 40 feet Other streets – 25 feet**
Minimum rear yard setback	Single, two-family – 15 ft Multiple-family and commercial – 20 ft	Minimum side yard setback (feet)	Single, two-family – 5 ft Multiple-family and commercial – 10 ft
Maximum height	35 feet May increase to 50 feet (see e. below)	Minimum setback from lake, river or stream (feet)	20 feet, and must include a shoreline buffer (see IV.C)
Parking spaces	See IV.O.	Maximum lot coverage	80%***

* Mixed resort commercial not limited to 16 units. **The front setback may be reduced to 15 feet along internal roads serving multiple-family dwelling complexes and mobile home parks. ***Maximum lot coverage is affected by slope. The maximum lot coverage given here is for slopes of 0-8%. See IV.D. for the maximum lot coverage permitted on steeper slopes.

- 4. Performance Standards.** All developments shall comply with the performance standards of Chapter IV, as applicable, and these additional performance standards.

- a. Multiple-Family Dwelling Complexes.** Multiple-family dwelling complexes include more than eight units and shall:

- i. Have direct access onto a collector or arterial street, or otherwise be located where they will not channel traffic onto local residential streets;
- ii. Provide all improvements required by IV.BB., and the Detailed Performance Standards for Multiple-Family Dwellings; and
- iii. Include site improvements that are maintained by the owner or an owners association.

- b. Mobile Home Parks.** Mobile home parks do not permit short-term (less than 30 days) occupancy, and shall:

- i. Have direct access onto a collector or arterial street, or otherwise be located where they will not channel traffic onto local residential streets; and

- ii. Provide all improvements required by Chapter IV, Division 2, with internal improvements being maintained by the owner or operator, as applicable.
 - iii. All mobile home parks must be licensed by the Montana Department of Public Health and Human Services.
- c. **Commercial Development.** Commercial uses should use the limited shoreline available to link local residents and travelers with the lake and river. Uses that can as effectively be located away from the shoreline should be. Also, the uses permitted in the RZD must pose no special threat to water quality. Examples of commercial uses that would be appropriate in the RZD include: i. hotels; ii. recreational vehicle parks; iii. restaurants – but not with drive-in service; iv. sporting goods sales and rentals; v. guide services; and, vi. marinas in compliance with h., below.
- d. **Landscape.** There shall be a coherent planting plan for the entire development, with special attention given to the role of vegetated surfaces in channeling and absorbing surface runoff, and to the shoreline buffer, which shall serve as an effective vegetative filter strip. See IV.W for landscape requirements.
- e. **Access to the Shore.** Any development that provides safe, continuous public pedestrian/bicycle access to or along the shoreline shall be permitted to increase its maximum building height from 35 to 50 feet. Examples of access that may qualify for this bonus include a public trail along the waterfront, a public park with parking, a restaurant open to the public with lakefront facilities, or similar. Award of such bonus does not eliminate the requirements of IV.C. for shoreline buffers.
- f. **Outdoor Sales and Storage.** Outdoor sales, including outdoor dining areas, shall be permitted. Outdoor storage shall also be permitted but shall be screened from public view by any effective combination of the placement of buildings, landscaping, and screening fences or walls. Watercraft storage is exempt from the screening requirement. Temporary storage of construction materials and equipment being used for work in progress is exempted from this screening requirement.
- g. **Marinas.** A marina may be an appropriate use in the RZD, but because marinas involve extensive lakeshore disturbance and the handling of fuel and other potential contaminants, the developer shall be required to:
 - i. Provide for a professionally prepared environmental assessment, including recommended mitigation measures;
 - ii. Provide plans sufficient to demonstrate compliance with the most current edition of National Fire Protection Association (NFPA) 303, *Fire Protection Standards for Marinas and Boatyards*, and other fire and building codes specifically applicable to marinas; and
 - iii. Provide shoreside pumpout facilities.

The need for an environmental assessment shall be established at the pre-application review and the production of the assessment will follow the procedure provided for community impact

reports in Chapter IV. Compliance with the appropriate city, and/or tribal Lakeshore Protection Regulations is also required.

5. **Overlay Districts.** All developments shall comply with any additional requirements imposed by overlay districts.

O. Highway Commercial Zoning District

1. **Purpose.** The Highway Commercial Zoning District (HCZD) provides a place for commercial uses that rely on easy automobile access. It is also the appropriate location for any commercial development that needs outdoor sales space.
2. **Land Use.** The permitted and special uses allowed in the HCZD shall be as shown in Table II. 14. All uses not explicitly permitted are prohibited. Examples of appropriate uses include overnight accommodations, eating, drinking and entertainment establishments, retail and wholesale goods, sales and service, day care centers, plant nurseries, car washes, veterinary clinics, auto, recreational vehicle and truck sales and repair, gas stations and similar uses.

Table II.14 HCZD Land Use

Permitted Uses	Special Uses
Highway oriented commercial <u>not</u> meeting the thresholds in 2.a. below	Highway oriented commercial meeting or exceeding the thresholds in 2.a. below
Accessory uses customarily associated with the permitted and special uses	Light industrial, may be associated with agricultural processing and/or sales
Public parks and recreation areas	Private parks and recreation areas
Minor utility installations (see III.C.6.)	Wireless communication facilities (see IV.DD)
Religious institutions	
Day care centers	

- a. **Thresholds for Special Use Permit Requirements.** Highway oriented commercial development meeting or exceeding either of the following thresholds shall require a special use permit in this district.
 - i. Any structure or combination of structures that exceeds 20,000 square feet in size. This square footage is cumulative, meaning if additional structures are added that bring the total above 20,000 square feet, a special use permit shall be required for the development.
 - ii. Development projected to generate more than 1000 average daily vehicle trips.

3. **Specification Standards.** The specification standards for the HCZD appear in Table II.15

Table II.15 Specification Standards

Standards	Specifications	Standards	Specifications
Minimum lot size	None	Minimum lot width, at front property line	None
Minimum front yard setback	15 feet	Minimum rear yard setback	15 feet
Minimum side yard setback	5 feet*	Maximum height	50 feet
Maximum lot coverage	80%**	Parking spaces	See IV.O.

* No side yard setback is required if the abutting parcel is zoned HCZD.

** Maximum lot coverage is affected by slope. The maximum lot coverage given here is for slopes of 0-8%. See IV.D. for the maximum lot coverage permitted on steeper slopes.

4. Performance Standards. All developments shall comply with the performance standards of Chapter IV, as applicable, and the following performance standards.

a. Development in the HCZD shall be designed and constructed to minimize the functional and appearance problems associated with the strip development pattern. Conditions to be minimized, to the extent feasible given the location, size, and context of the lot or parcel, include:

- i. Development that is only one lot in depth, has numerous points of access to public streets, and makes no provision for safe pedestrian and bicycle circulation. To address these issues:
 - (A) Development in the HCZD shall connect to adjoining properties in the HCZD by providing access and utility easement(s), and vehicle, pedestrian and bicycle facilities;
 - (B) Continuous pedestrian walkways and bikeways shall be provided from the property perimeter to the principal public entrance; and
 - (C) Crosswalks shall have contrasting color from the surrounding surface; and
 - (D) Bicycle parking stands shall be provided.
- ii. View from the road that is dominated by vehicles, asphalt, and signs. To address these issues:
 - (A) All development in the HCZD shall include landscape that meets or exceeds the requirements of IV.W.
 - (B) Parking spaces are encouraged to be located on multiple sides of a building, not only along one access street frontage.
 - (C) Signs shall be architecturally related to the building to which they are principally related and meet the requirements of the sign ordinance. Freestanding signs shall have landscaping at their base.
 - (D) Loading docks, truck parking, trash containers, HVAC equipment and other such permanent features shall be screened from public view and pedestrian areas. Screening structures shall be made of the same materials as the principal structure, or of material intended to visually blend into a cohesive architectural theme. Parking and loading areas shall meet or exceed the requirements of IV.O.
- iii. Bland, monolithic architecture that has little connection to the setting, community or history and limited visual appeal. To address this issue:
 - (A) Building façades shall be primarily finished in subtle, neutral or earth tones with low reflectivity and be finished with varying materials, textures and colors.

- (B) Building façades shall include modulated wall planes with projections, recesses and/or offset planes with a minimum depth of 2 feet;
- (C) Visual rooflines shall be varied, and may include parapets and other architectural features;
- (D) Landscaping shall be incorporated into the building design and include at least 1 major tree and 4 shrubs per each 40 linear feet of building façade that faces a public street; and
- (E) Designs are encouraged to include amenities such as shaded plazas, children’s play areas, trellis structures, covered walkways, clock towers, seating and drinking fountains that are shaded and located in or near circulation routes, outdoor employee areas, water features and outdoor art. Amenities shall be linked to and incorporate pedestrian and bicycle facilities.

b. Access to Commercial and Industrial Uses. No commercial development shall have its principal access through the LRZD or MRZD.

c. Outdoor Sales and Storage. Outdoor sales shall be permitted in the HCZD. Outdoor storage is also permitted, but shall be screened from public view by any effective combination of the placement of buildings, landscaped buffers, and screening fences or walls. Temporary storage of construction materials and equipment being used for work in progress is exempted from this screening requirement.

5. Overlay Districts. All developments shall comply with any additional requirements imposed by overlay districts.

P. Central Business Zoning District

- 1. Purpose.** The Central Business Zoning District (CBZD) is intended to encompass the “commercial core” of the city, and provide a place for the redevelopment or development of uses that depend on pedestrian circulation and a central location.
- 2. Land Use.** The permitted and special uses allowed in the CBZD shall be as shown in Table II.16. All uses not explicitly permitted are prohibited.

Table II.16. CBZD Land Use

Permitted Uses	Special Uses
Commercial	Multiple-family dwelling*
Accessory uses customarily associated with the permitted and special permit uses	Wireless communication facilities (see IV.DD)
Mixed commercial and residential uses where residential is located above or to the rear of commercial*	Religious institutions
Minor utility installations (see III.C.6.)	
Public parks and recreation areas	
Day care Centers	
Government, public safety/service, libraries, non-profits	
Home occupations up to 1 on site employee in compliance with IV.Z	

*For mixed use or multiple-family dwelling developments along Main Street, commercial uses shall abut Main Street along the lower level street frontage.

- 3. Specification Standards.** The specification standards for the CBZD appear in Table II.17. Note: The specification standards in Table II.17 apply to all new development. For existing, non-conforming single family and two-family homes, the MRZD specification standards apply.

Table II.17. CBZD Specification Standards

Standards	Specifications	Standards	Specifications
Minimum lot size	None	Minimum lot width, at front property line	None
Minimum front yard setback	15 feet for multiple-family dwellings, also see IV.BB.	Minimum rear yard setback	15 feet for multiple-family dwellings, also see IV.BB.
Minimum side yard setback	10 feet for multiple-family dwellings, also see IV.BB.	Maximum height	50 feet
Maximum lot coverage	100% for commercial 80% for multiple-family dwellings	Parking spaces	See IV.O
Minimum setback from lake, river or stream	50 feet, and must include a shoreline buffer (see IV.C)		

- 4. Performance Standards.** All developments shall comply with the performance standards of Chapter IV, as applicable, and the following additional performance standards.
- a. Outdoor Sales and Storage.** Limited outdoor sales, including outdoor dining areas and participation in temporary “sidewalk sales” shall be permitted. All storage, except temporary storage of construction materials and equipment being used for work in progress, shall be within buildings.
- 5. Overlay Districts.** All developments shall comply with any additional requirements imposed by overlay districts.

Q. General Commercial – Industrial Zoning District

1. **Purpose.** The General Commercial – Industrial Zoning District (CIZD) is intended to provide a place for a wide range of commercial uses that do not rely on direct highway access or a CBZD location, and industrial development in the city jurisdictional area.
2. **Land Use.** The permitted and special uses allowed in the CIZD shall be as shown in Table II. 18. All uses not explicitly permitted are prohibited.

Table II.18. CIZD Land Use

Permitted Uses	Special Permit Uses
Commercial, industrial or light industrial generating less than 100 truck trips or 200 or more total vehicle trips per average weekday (whichever is less), with primary access through a residential district	Commercial, industrial or light industrial generating 100 or more truck trips or 200 or more total vehicle trips per average weekday (whichever is less), with primary access through a residential district
Accessory uses customarily associated with the permitted and special permit uses	Wireless communication facilities (see IV.DD)
Religious institutions, social services, government, public safety/service	Parks and recreation areas, public or private
Minor utility installations (see III.C.6.)	
Community gardens	

3. **Specification Standards.** The specification standards for the CIZD are shown in Table II.19.

Table II.19. CIZD Specification Standards

Standards	Specifications	Standards	Specifications
Minimum lot size	None	Minimum lot width, at front property line	None
Minimum front yard setback	Along Hwy 93 – 30 feet with 10' landscape buffer Along other streets 20 feet	Minimum rear yard setback	10 feet
Minimum side yard setback	10 feet	Maximum height (feet)	35 feet
Maximum lot coverage	80%*	Parking spaces	See IV.O.
Minimum setback from lake, river or stream	50 feet, and must include a shoreline buffer (see IV.C)		

* Maximum lot coverage is affected by slope. The maximum lot coverage given here is for slopes of 0-8%. See IV.D. for the maximum lot coverage permitted on steeper slopes.

4. **Performance Standards.** All developments shall comply with the performance standards of Chapter IV, as applicable, and the following additional performance standards.

- a. Access to Commercial and Industrial Uses.** No commercial or industrial development shall have its principal access through the LRZD or MRZD unless access is from an arterial or collector street.
- 5. Overlay Districts.** All developments shall comply with any additional requirements imposed by overlay districts.

R. Recreational Vehicle and General Campgrounds Zoning District

- 1. Purpose.** The Recreational Vehicle and General Campgrounds Zoning District (RVZD) is intended to permit recreational vehicle (RV) developments and campground developments within the city. The RVZD is intended to allow for condominium ownership of certain recreational vehicle developments in addition to the rental/lease of individual sites and the permitted and special permit uses, as applicable. This district is appropriately applied to areas where recreational facilities are available. All applicable permitted uses shall adhere to the Administrative Rules of Montana, Title 37, Chapter 111, subchapter 202-230 (ARM 37-111-202-230).
- 2. Land Use.** The permitted and special permit uses allowed in the RVZD shall be shown in Table II.20. All uses not explicitly permitted are prohibited. The RVZD is intended to allow for a combination of the permitted and/or special permit uses within any development. All terms not defined in Chapter VII., Definitions, are defined at the end of this section, below.

Table II.20 RVZD Land Use

Permitted Uses	Special Uses
General service campgrounds	Restaurants open to the general public
Recreational vehicle developments, including RV condominiums	Wireless communication facilities (see IV.DD)
Limited commercial uses, as provided below	Private parks and recreation areas over and above accessory uses
Public parks and recreation areas	
Accessory uses customarily associated with the permitted and special permit uses, including the incidental uses listed below	
Storage (only for use by occupants of campgrounds/developments)	
Minor utility installations (see III.C.6.)	

- 3. Specification Standards.** The specification standards for the RVZD appear in Table II.21.

Table II.21. RVZD Specification Standards

Standards	Specifications	Standards	Specifications
Lot size	2,000 square feet average 1,200 square feet minimum	Maximum density (number of sites per gross acre)	12
Minimum site width at access roadway	30 feet	Maximum height	30 feet
Maximum lot coverage*	60%		

* Maximum lot coverage is affected by slope. The maximum lot coverage given here is for slopes of 0-8%. See IV.D. for the maximum lot coverage permitted on steeper slopes.

- 4. Performance Standards.** All developments shall comply with the performance standards in Chapter IV, as applicable, and the following additional performance standards. Some of the following performance standards supersede those standards in Chapter IV, and in such instances are specifically noted.

1. Land Use.

- a. Limited Commercial Uses.** The limited commercial uses permitted shall be compatible with campground developments and/or RV developments, and generate only low to moderate levels of activity. The commercial uses shall generally be intended to only serve the campground and/or RV developments. In order to minimize the levels of activity, there shall be no separate signage advertising commercial uses for which the sign is intended to be viewed from any external vehicular or pedestrian right-of-way. Examples of permitted commercial uses in the RVZD include:

- i. Convenience stores/markets;
- ii. Retail sales of items related to maintenance and operation of general services campgrounds and RV uses;
- iii. Gift shops;
- iv. Recreational bookings;
- v. Beauty and barber services; and
- vi. Small scale eating and drinking places primarily for residents and their guests.

- b. Incidental Uses.** The following incidental uses may only be included for the convenience of the RV park and campground occupants, owners and/or manager/caretaker.

- i. Two (maximum) single-family dwellings for occupancy by the campground owner and/or manager/caretaker;
- ii. Office for campground use or sales office for condominium use;
- iii. Service building (restroom and shower facilities);
- iv. Laundry facilities;
- v. Indoor and outdoor recreational facilities including a recreational center, tennis, basketball and volleyball courts, assembly rooms, swimming pools, hot tubs and game courts.
- vi. Maintenance shops or sheds; and
- vii. Tot lots or playgrounds.

- 2. Vehicular Access.** Developments within the RVZD shall provide private internal streets.

- 3. Pedestrian Access.** Provisions for pedestrian access are not required in the RVZD.

- 4. Parks.** Park dedication must meet the requirements of 76-3-621(1), MCA and IV.S. as approved by the City Commission.

- 5. Recreational Vehicle Storage.** An area may be provided only for the campground or recreational vehicle site owners/lessees/renters to store RVs, trailers, other vehicles and watercraft to be stored when not in use. One storage unit may be located on each site for the use of the owner or renter of the site.

- 6. Landscaping.** All new development shall comply with the landscape standards in Chapter IV.W.
- 7. Streets, sidewalks and trails.** The following street, sidewalk and trail performance standards are intended to supersede the performance standards listed in the *City of Polson Standards for Design and Construction*. Any standard not specifically addressed below shall follow the performance standards of *City of Polson Standards for Design and Construction*.
- a. **Private Streets.** All interior streets within the RVZD development shall be private streets.
 - b. **Right-of-way.** Street easements and surface widths shall conform to the following standards:

Table II.22. Right-of-way and Street Standards

	One-way streets & emergency access	Two-way streets	Two-way streets w/ parking on one side	Two-way streets w/ parking on both sides
Easement width (feet)*	20	30	35	45
Road surface width (feet)	15	24	28	36

*Utility and access areas shall be required to be dedicated as “common elements” for condominium developments that will benefit all owners of the development. These elements shall be shown on a Condominium Plan filed in the office of the Lake County Clerk & Recorder. For campground and non-condominium developments, easements are not required.

- c. **Parking.** One visitor parking space per five campsites or RV sites shall be provided. Handicap accessible parking shall be provided at a ratio of 1 space per every 25 campsite or RV sites or per ADA requirements, whichever is greater. Van accessible handicap spaces shall be provided at a ratio of 1:8 for the total number of handicap spaces with the first handicap space being van accessible.
- d. **Surface Construction.** Private street surfaces shall be laid over a properly compacted sub-grade and shall consist of:
 - i. A geo-textile (woven) mat shall be installed over the existing excavated material;
 - ii. A sub-base of well-graded 3-inch minus pit run material 18-24 inches in depth;
 - iii. A base of well-graded ¾-inch minus crushed gravel a minimum of 4 inches deep;
 - iv. In lieu of the above requirements, an alternative road cross section may be approved by the City Engineer if the cross section design is completed, sealed and signed by a professional engineer licensed in the State of Montana.
- e. **Sidewalk and Trail Construction.** Sidewalk or trail construction is encouraged but not required.
- f. **Minimum Centerline Offset of Intersections.** There shall be no minimum centerline offset between intersections on the interior private streets in the RVZD.

8. Individual RV and Campground Site Improvements.

- a. Each site shall contain a stabilized parking pad with adequate space to provide parking for one RV and one passenger vehicle. The parking spaces can be either in-line or side by side, with a surface covering of crushed stone, pavers, tile, brick, paving, asphalt, concrete or other suitable material. The parking pad shall be sloped at a 1% minimum grade to accommodate drainage.
- b. All areas not hard surfaced shall be landscaped.
- c. RV sites shall be provided with electrical, potable water and sewer service connections. Campground sites may be one of three types: full hook up, water and electric, or dry.

9. Number of RVs Per Site. One RV per site connected to utilities shall be allowed.

10. Service Buildings. Based on the standards set forth in ARM 37.111.230, a central service building shall be provided for each development that qualifies as a general services campground that has spaces designated for use by trailers or tents. The central service building must contain toilets and other plumbing fixtures as follows:

- a. Toilets, urinals, and combination hot and cold water lavatory sinks and showers are required at each general services campground in the ratios set forth under table II.23.

Table II.23. RVZD Specification Standards

Number of Spaces	Toilets		Showers		Lavatories		Urinals
	Men	Women	Men	Women	Men	Women	
1-15	1	1	2	2	1	1	1
16-30	1	2	2	2	2	2	1
31-45	2	2	2	2	3	3	1
46-60	2	3	3	3	3	3	2
61-80	3	4	3	3	4	4	2
81-100	3	4	3	3	4	4	2

- b. The service building must be of permanent construction and equipped with lighting, lavatories, toilets, and a janitorial sink. Interior service building surfaces in plumbed areas must be smooth, non-absorbent, and easily cleanable. Showers must have non-slip surfaces and ventilation. All windows, doors, and other openings must be screened or closed.
- c. The service building must be conveniently located within a radius of 300 feet from all spaces or campsites to be served.

11. Condominium Ownership. Only RVs and park model sites can be placed under condominium ownership. All other sites including tent sites, cottages, and cabins may be rented as general services campground sites, as applicable. A membership organization (unit owners association) that adopts covenants shall be established with the Montana Secretary of State to provide for the use and maintenance of common areas and spaces by the members. The owner of a condominium site may rent or lease that site, and the owners have the right to combine sites, but not to re-subdivide.

E. Overlay Districts. All developments shall comply with any additional requirements imposed by Overlay Districts.

F. Definitions. See also Chapter VII for additional definitions.

Area: See “site”.

Cabin: A hard-sided structure occupying a campsite that is set on a permanent or temporary foundation.

Camping Trailer: A vehicular portable unit mounted on wheels and designed for travel, recreation, and vacation, and constructed with collapsing partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping or travel use.

Campsite: That part of a campground where a cabin is located or that is designated for a tent space, camping trailer, cottage, motor home, park model, or recreational vehicle space.

Cottage: A hard sided structure that include self-contained living quarters, with all of the amenities of a residence.

Dry Campsite: A campsite that provides no services. See “full hook up campsite” and “water and electric campsite”.

Fifth Wheel Trailer: A vehicular unit that is

- a. mounted on wheels;
- b. designed to provide temporary living quarters for recreational, camping, or travel use;
- c. of such size or weight that it does not require a special highway movement permit;
- d. of gross trailer area not to exceed 400 square feet in the set-up mode; and
- e. is designed to be towed by a motorized vehicle that has a towing mechanism mounted above or forward of the tow vehicle’s rear axle.

Full Hook Up Campsite: A campsite that provides water, electricity and sewer service connection. See “dry campsite”.

General Services Campground: A campground used for public camping that provides on-site water supply, sewage disposal, solid waste disposal, and other services such as laundry or groceries.

Limited Services Campground: Limited services campgrounds are not permitted in the RVZD. Limited services campgrounds are used for public camping that are accessible by a motorized vehicle but to not provide all of the following services:

- a. an adequate and potable water supply, if required, as determined under ARM 37.111.206;
- b. adequate sewage disposal, as determined under ARM 37.111.207; and
- c. adequate solid waste disposal, as determined under 37.111.217.

Motor Home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use that is built on or attached to a self-propelled motor vehicle chassis or to a chassis cab or van.

Park Model: A recreational vehicle as certified by the Recreational Park Trailer Industry Association, Inc. (RPTIA), designed as temporary living quarters for recreation, camping or seasonal use. Park models are built on a single chassis mounted on wheels, and have a gross area not exceeding a total of 700 square feet when set up, including detachable room add-ons. Add-ons are not to exceed 300 square feet. This square footage does not include covered decks or patios.

Primitive Campground: A campground that is used for backcountry camping and does not have any services. Primitive campgrounds are not permitted in the RVZD.

Recreation Center: A permanent facility containing area for indoor recreation. It may include fitness areas, restrooms, showers, dining, meeting and assembly rooms, meal preparation facilities and convenience food areas.

Recreational Vehicle or RV: A recreational vehicle is a park model, motor home, travel trailer, truck camper, fifth wheel or camping trailer, with or without motive power, designed for temporary recreational or emergency occupancy. Recreational vehicles are not mobile homes.

Recreational Vehicle Condominium Development: A recreational vehicle condominium development is designed for the sales of RV and/or park model spaces. Spaces may also be rented or sub-leased or combined, but sites cannot be re-subdivided. Tent spaces, cottages and cabin use are allowed but may be rented only. Automobiles or passenger trucks may remain on-site during periods of non-occupancy, but occupancy shall meet the requirements of this chapter.

Recreational Vehicle Park: Any lot or parcel used for temporary occupancy by recreational vehicles. Recreational vehicle parks are reviewed as subdivisions.

Site: The area defined on a condominium or campground plan used for camping that may be occupied, sold, rented or leased, as applicable. Has the same meaning as space or area, and is applicable to both campsite and condominium sites.

Site Coverage: The percent of a site that is covered by rooftops, paved roads, tents, trailers, travel trailers, cabins, cottages, park models, RVs and other surfaces that prevent direct infiltration of precipitation or runoff into the soil.

Space: See "site".

Storage Unit: A permanent or semi-permanent structure for the exclusive use of campground or RV condominium site occupants for the storage of items related to permitted and special permit uses.

Tent: A collapsible shelter of canvas or other fabric stretched and sustained by poles and used for camping outdoors.

Tent Space: That part of a campground designated for the placement of a single tent and the exclusive use of its occupants. A tent space does not include a pitched tent on a designated trailer space that is used for sleeping purposes by persons who have rented the trailer space.

Trailer: Trailers include camping trailers, motor homes, park models and RVs.

Trailer Space: That part of a campground or condominium development designated for the placement of a single trailer and the exclusive use of its occupants.

Truck Camper: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, and designed to be loaded onto and unloaded from the bed of a pickup truck.

Water and Electric Camp Site: A site that provides potable water and electricity.

S. Hospital Mixed Zoning District

- 1. Purpose.** The Hospital Mixed Zoning District (HMZD) is intended to permit medically related services and mixed residential development.
- 2. Land Use.** The permitted and special uses allowed in the HMZD shall be shown in Table II.24. All uses not explicitly permitted are prohibited.

Table II.24. HMZD Land Use

Permitted Uses	Special Uses
Single-family and two-family dwelling	Hospital complexes
Multiple-family dwelling, up to 4 units per structure	Multiple-family dwelling, 5 to 8 units per structure
Medical offices, medical support services	Religious institutions – day care centers - schools
Community residential facilities, 8 or fewer residents - day care home	Community residential facilities, 9 or more residents
Public parks and recreation areas	Private parks and recreation areas
Home occupations up to 1 on site employee in compliance with IV.Z	Home occupations 2-4 on site employees in compliance with IV.Z
Social services, government, public safety/service	Wireless communication facilities (see IV.DD)
Minor utility installations (see III.C.6)	
Bed and breakfasts (see IV.AA)	
Accessory uses customarily associated with the permitted and special permit uses	
Community gardens	

- 3. Specification Standards.** The specification standards for the HMZD appear in Table II.25.

Table II.25. HMZD Specification Standards

Standards	Specifications	Standards	Specifications
Minimum lot size	6,000 square feet	Lot area in addition to the base minimum for each additional unit in two-family and multi- family dwellings	1,000 square feet
Minimum lot width, at front property line	40 feet	Minimum front yard setback	25 feet
Minimum rear yard setback	Single and two-family residences 15 feet All other uses 20 feet	Minimum side yard setback	5 feet
Maximum height	35 feet	Maximum lot coverage	65%*
Parking spaces	See IV.O.		

*Maximum lot coverage is affected by slope. The maximum lot coverage given here is for slopes of 0-8%. See IV.D. for the maximum lot coverage permitted on steeper slopes.

4. Performance Standards. All developments shall comply with the performance standards of Chapter IV, as applicable, including performance standards for multi-family dwellings (IV.BB.) and the following additional performance standards.

a. Outdoor Storage. See also IV.V., Potential Nuisances. Outdoor storage shall be permitted anywhere it is fully screened from public view and adjoining properties. Outdoor storage that is not fully screened shall be permitted anywhere in rear yards, but not in front yards, or any required side setback areas. This permits storage to the side of a dwelling that has a larger than required side setback area, except that:

- i. Construction equipment and materials may be stored in front, rear and side yards (including setback areas) during the course of work for which a permit has been approved in compliance with these regulations. This exception expires with the permit or upon issuance of a certificate of compliance.
- ii. Vehicles and watercraft with current registrations may be parked in front, rear and required side yards (including setback areas). Parked vehicles or watercraft shall not block vision at intersections or where driveways enter public streets.

b. Accessory Buildings. Accessory buildings shall be permitted anywhere in rear yards, but not in front yards or required side setback areas.

c. Day Care Centers. Day care centers shall:

- i. Be registered with the Montana Department of Family Services;
- ii. Provide off-street parking and loading areas in compliance with IV.O.;
- iii. Retain a residential appearance, or the appearance of a special permit use like a religious institution or a school
- iv. Provide a minimum six-foot high opaque wood or masonry fence or a 20-foot landscaped buffer between all outdoor play areas and adjoining dwellings.
- v. Day care centers may display a single wall sign of no more than 16 square feet and external lighting only (as provided in sign ordinance).

d. Multiple-Family Dwelling Complexes. Multiple-family dwelling complexes include more than eight units and shall:

- i. Have direct access onto a collector or arterial street, or otherwise be located where they will not channel traffic onto local residential streets;
- ii. Provide all improvements required by Chapter IV.BB and the Detailed Performance Standards for Multiple-Family Dwellings; and
- iii. Internal improvements that are maintained by the owner or a condominium association.

5. **Overlay Districts.** All developments shall comply with the additional requirements imposed by overlay districts.

T. Airport Safety Overlay District

1. Purpose. The purpose of the Airport Safety Overlay District (ASOD) is to protect the lives of aircraft pilots and passengers, and the public investment in the Polson Airport. This chapter establishes airport safety zones around the Polson Airport, as called for by the Federal Aviation Administration (FAA) in the Federal Aviation Regulations, Part 77 – *Objects Affecting Navigable Airspace*.

Division 1 – Procedural Requirements

2. Additional Requirements for Nonconforming Uses. Nonconforming buildings and uses are regulated by the provisions of Chapter III.FF. and, within the ASOD, these additional requirements.

- a. Nonconforming uses shall permit installation, operation, and maintenance of any markers or light needed to indicate their presence to aircraft pilots.
- b. No nonconforming building or tree shall be permitted to become a greater hazard to air navigation than it was on the effective date of these regulations (adopted March 7th, 1994).

3. Additional Requirements for Permits. Within the ASOD, the permit requirements established by III.B. shall be expanded to include the planting of any tree with a growth habit of more than 30 feet and the construction of any building that is more than 30 feet in height, but is exempted from the requirement for a permit by III.C.

4. Additional Requirements for Variances. The variance procedure is described at III.Q. Any application for a variance of the height limitations established by this chapter shall be accompanied by a determination from the FAA as to the effect of the proposal on the operation of air navigation facilities and the safe use of navigable airspace.

5. Obstruction Marking and Lighting. Approval of any application for a permit or variance may be conditioned upon the installation, operation, and maintenance, at the owner's expense, of the markings or lights necessary to indicate the presence of an obstruction to aircraft pilots.

Division 2 – Height and Use Limitations

6. Height Limitation Zones. The ASOD is composed of several height limitation zones, which include all land lying beneath the approach, transitional, horizontal, and conical surfaces appurtenant to the Polson Airport. Except as provided in 7., below, no building, structure, or tree may extend above any of these surfaces. Any area located in more than one of these zones is considered to be only in the zone with the more restrictive height limitation.

a. Approach Zones. These approach zones are for utility visual approach runways.

- i. The inner edges of these zones coincide with the width of the primary surface and are 250 feet wide. The approach zones expand outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the ends of the primary surface and their centerlines and are continuations of the centerline of the runway.

- ii. The utility runway visual approach surfaces slope 20 feet outward for each foot upward beginning at the end of, and the same elevation as, the primary surface, and extending a horizontal distance of 5,000 feet along the extended runway centerline.
 - b. Transitional Zones.** The transitional zones are the areas beneath the transitional surfaces, which slope seven feet outward for each foot upward beginning at the sides of and same elevation as the primary and approach surfaces, and extending to the horizontal surface. Transitional surfaces also slope seven feet outward for each foot upward beginning at the sides of and same elevation as the approach surface, and extending to the conical surface.
 - c. Horizontal Zone.** This zone is described by swinging arcs of 5,000 feet from the center of each end of the primary surface and connecting the adjacent arcs by drawing lines tangent to them. The horizontal zone does not include the utility runway visual approach or transitional zones. The horizontal surface is 150 feet above the airport elevation.
 - d. Conical Zone.** This zone is the area that commences at the perimeter of the horizontal zone and extends outward from it a horizontal distance of 4,000 feet. The conical surface slopes 20 feet outward for each foot upward beginning at the edge of the horizontal surface, and extending to a height of 350 feet above the airport elevation.
 - e. Nothing in this chapter shall prevent construction or maintenance of any structure of 30 feet or less in height, or growth of any tree to a height of 30 feet, above the surface of the land within the horizontal and conical zones.**
- 7. Use Restrictions.** No use shall interfere with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards or in any way endanger or interfere with the operation of aircraft.
- 8. RESERVED.**

U. Wellhead Protection Overlay District

1. **Purpose.** The Wellhead Protection Overlay District (WPOD) is intended to protect the City's groundwater supply from contamination.
2. **Wellhead Protection Zones.** The WPOD consists of two wellhead protection zones, which are shown on the zoning districts map adopted in II.B.
 - a. **Wellhead Protection Zone I** includes the area within a 100-foot radius of a municipal well or the current control region identified in accordance with guidelines in the Source Water Protection Program (MDEQ, 1999) and approved by the Montana Department of Environmental Quality.
 - b. **Wellhead Protection Zone II** includes the area within which groundwater has an approximately three year time of travel to a municipal well, or the current inventory region identified in accordance with the guidelines in the Source Water Protection Program (MDEQ, 1999) and approved by the Montana Department of Environmental Quality.

All development on existing parcels of land and the creation of new parcels within the WPOD shall be consistent with the protection of groundwater resources, including existing underground storage tanks. Land uses and developments or improvements may not result in exposure of the source water used by the public water supply to moderate or high susceptibility to contaminant sources as determined by a susceptibility assessment completed pursuant the Montana Source Water Protection Program.

3. **Land Use in Wellhead Protection Zones.** Table II.26. shows the additional land use regulations applicable in the wellhead protection zones.

Table II.26. WPOD Land Use

Use/Activity	Wellhead Protection Zone I	Wellhead Protection Zone II
Floor drains, sumps, injection wells (not to include runoff catchments From roofs of individual homes)	PROHIBITED	PROHIBITED
Drainage from a building interior shall be through an approved sewage disposal system, with pre-treatment Provided as required by the City, Montana Department of Environmental Quality, or US EPA		
Generation, storage, or handling of hazardous materials in quantities regulated by state and federal law	PROHIBITED	PROHIBITED
Gravel mines and other excavations that are open for over six months	PROHIBITED	Special use permit required, for additional performance standards See 4.a., below.
Storm sewers	PROHIBITED	Permitted in compliance with an approved runoff management plan,;
On-site sewage disposal	PROHIBITED	PROHIBITED
Underground storage tanks	PROHIBITED	Development permit required. See 4.b., below

4. Additional Performance Standards.

- a. Gravel Mines, Other Excavations.** Gravel mines and similar excavations are prohibited in Wellhead Protection Zone I (see Table II.26), but shall be permitted in Wellhead Protection Zone II, upon approval of a special use permit and compliance with the following additional performance standards.
- i. A 50-foot minimum vertical buffer shall be maintained between the bottom of the excavation and the water table. The developer shall drill one or more observation wells, or use any existing well(s) on the site to collect data and prepare a mining plan demonstrating that this buffer will be maintained. The mining plan shall be submitted with the application for a special use permit.
 - ii. Surface runoff is channeled away from the excavation by vegetated berms and/or swales.
 - iii. No fuel or other hazardous material shall be stored in the excavated area or on the inward slope of the surrounding berms.
 - iv. An effective security fence shall be erected on the perimeter and the site shall be kept inaccessible when not in operation. The developer/operator is liable for the costs of clean-up if hazardous materials, septage, or other wastes are dumped on the site.
 - v. The site shall be reclaimed in compliance with state law, with reclamation phased to minimize the extent of excavation open at any one time.
- b. Underground Storage Tanks, not including individual propane tanks for household use.** Table 11.26 and these performance standards apply to all underground storage tanks (USTs) in which fuel or other hazardous materials are or may be stored, including tanks that are not regulated by state or federal law. USTs are prohibited in Wellhead Protection Zone I, but may be permitted in Wellhead Protection Zone II, upon approval of a development or special use permit (where the UST is part of a proposed development that requires one), and compliance with applicable state and federal laws, and the following additional performance standards:
- i. All USTs installed in Wellhead Protection Zone II shall have a complete secondary containment system; and
 - ii. All USTs installed in the Wellhead Protection Zone II shall be subject to monitoring by the City, and to the payment of an annual fee, set by resolution of the Commission, to cover the costs of such monitoring.

V. Resort Residential Overlay District

1. **Purpose.** The purpose of the Resort Residential Overlay District (RROD), is to allow golf courses, tennis clubs, fitness centers, and similar commercial uses to be integrated into residential developments on the basis of a master plan for the entire property. Where it overlays the LRZD, this overlay district also permits attached housing, at the same density permitted for single-family dwellings in the LRZD.
2. **Additional Land Uses Permitted.** The additional land uses permitted by the RROD shall include:
 - a. Golf courses, tennis courts, health clubs, ice skating rinks, playgrounds and playing fields, swimming areas, marinas and similar commercial recreational uses, and incidental retail sales and restaurants associated with these uses; and
 - b. Where it overlays with the LRZD (see II.I), attached housing at a maximum density of six units per acre.
3. **Site Plan.** The RROD may be applied to undeveloped areas zoned LRZD, XRZD or MRZD by amendment of the zoning districts map adopted in Chapter II.D. No such amendment shall be considered except upon submission of a site plan showing how the proposed commercial use will be made compatible with the neighboring residential development. Approval of the plan and/or map amendment shall constitute approval of the site plan, and development permits on the property shall be issued only in compliance with that site plan.
4. **Standards.** Commercial uses permitted in the RROD shall comply with the specification standards of the zoning district in which they are sited; the performance standards of Chapter IV, as applicable; and the following additional performance standards.
 - a. **Operating Hours.** Limited operating hours may be required.
 - b. **Traffic.** Commercial uses permitted in the RROD shall have direct access to a collector or arterial street, or otherwise be located where they will not channel traffic onto local residential streets.
 - c. **Outdoor Sales and Storage.** The RROD permits certain commercial outdoor recreational activities, but outdoor sales, with the exception of outdoor dining areas, shall not be permitted. All storage shall be enclosed in a building or fully screened from public view of the neighboring residences.

CHAPTER III – ZONING ADMINISTRATION

- A. What This Chapter Does.** This chapter establishes the requirement for a permit for all land development and building activity in the city; and establishes procedures for the administration of these zoning regulations.

Division 1 – Permits Required

- B. Permits Required.** A permit shall be required for any clearing, grading, excavation, construction, reconstruction, non-minor change of occupancy or use, land development, re-development, building activity, or fence erection, except as specifically exempted by III.C or III.D., below. These regulations include the following five kinds of permits:
1. A zoning conformance permit shall be required for any land use or building activity listed as “permitted” in these regulations. The zoning conformance permit procedure is found at III.J, below.
 2. A fence permit is required prior to erecting a fence within the city limits. The fence permit procedure is found at III.J., below
 3. A certificate of occupancy/change of use permit is required when a new business or change in land use that does not qualify as a minor change in occupancy occurs in an existing structure, and when a new structure is completed. The certificate of occupancy/change of use permit procedure is found at III.J., below.
 4. A special use permit shall be required for any land use or building activity listed as a “special permitted use” in these regulations. The special use permit procedure is found at III.K., below.
 5. Structural building and demolition permits are also required within the city limits prior to construction and demolition and are available through the Polson Building and Planning Department.
- C. Exemptions for Development Activity.** The activities listed here are not exempt from any applicable requirement of these regulations, except the requirement for a permit. No permit shall be required for:
1. Clearing, grading, or excavation for the installation or maintenance of landscaping and gardens;
 2. Repair or remodeling that does not alter the exterior dimensions of the building by more than six inches (note that the city’s fire and building codes may require a permit for such activities);
 3. Construction or installation of accessory buildings that are exempt from review for compliance with the city’s fire and building codes (generally, single story accessory buildings with a projected roof area of less than 120 square feet that are not used for habitation), except where such buildings are within an airport safety zone or shoreline buffer established by these regulations;
 4. Minor changes of occupancy where the new occupancy or use has identical or lesser parking requirements, similar traffic generation potential, creates no additional signage, and has, as determined by the administrator, similar or lesser impacts on neighboring land uses;

5. Minor utility installations, except where such installations are within an airport safety zone or shoreline buffer established by these regulations; and
6. Installation of roads, curbs, gutters, sidewalks, trails, utilities, irrigation facilities and other items required as conditions of preliminary subdivision approval (not including the development of individual lots for residential, commercial or industrial purposes).

D. Natural Resource Development. As provided by 76-1-113(1), MCA, these regulations do not prevent “the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof”, except as provided by 76-1-113(2), MCA, which authorizes exclusion of sand and gravel mining districts and associated processing (including concrete mixing and asphalt plants) from residential zoning districts. In order to establish reasonable conditions upon their operation, these regulations do require a special use permit for new mines. Note also that the processing of mineral, forest, or agricultural commodities is an industrial use, subject to all applicable requirements of these regulations.

E. Application Forms and Fees.

1. Applications for permits shall be submitted on forms provided by the city (see Administrative Materials). All applications shall include a site plan or preliminary plat, and all other maps, plans, drawings, tabulations, calculations, and text needed to demonstrate compliance with these regulations. The administrator may require submission of multiple copies of application forms and supporting materials, as well as a copy of all documents to be submitted electronically in PDF or similar format.
2. Application fees for each type of permit and the other procedures (appeals, variances, etc.) established by these regulations shall be set by resolutions of the Polson City Commission.
3. No incomplete or insufficient application will be accepted for review and acted upon by the appropriate decision making body (e.g., administrator, board of adjustment).

F. Contents of Site Plans. Site plans shall include information necessary to demonstrate compliance with these regulations. Each permit application lists specific information that is pertinent to that request. All pertinent information shall be submitted by the applicant. See Administrative Materials for permit application forms.

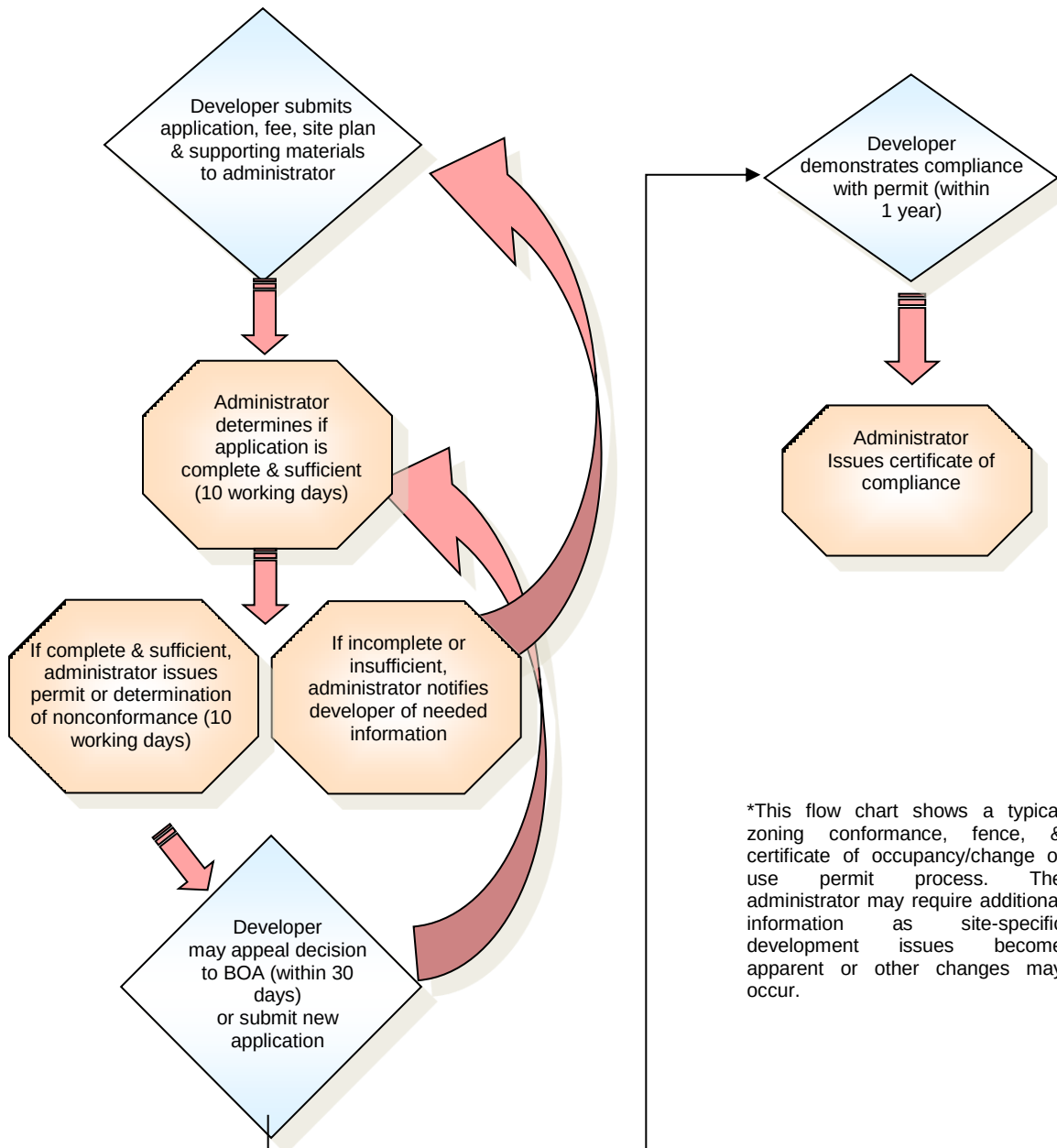
G. Site Inspection. The filing of an application for a permit constitutes permission for the administrator and appropriate personnel to conduct inspections of the proposed development site during their consideration of the application, and to subsequently monitor compliance with any conditions of approval during the life of the permit. In the event of a publicly noticed, on-site public meeting, the permission for site inspection is extended to members of the public and affected agencies attending the on-site meeting.

H. Zoning Lot Determination. When a person owns more than one contiguous lot, the lots may be viewed as a single tract of land for the application of area, lot coverage, setback and other requirements of the zoning district upon obtaining a zoning lot determination from the administrator. The transfer of any lot or any modification of the interior lot lines (except for the elimination of any lot lines) shall void the zoning lot determination. See Administrative Materials A for an application form.

Division 2 – Permit Procedure

- I. Who Reviews Permits.** All permit applications shall be submitted to the administrator.
1. The administrator shall review and have the authority to act on zoning conformance permits, fence permits, and certificates of occupancy/change of use permits when the proposed land use is found to be in compliance with these regulations.
 2. Where action by elected officials is required, either upon recommendation of the administrator and planning board, or independently, applications shall be reviewed by the City Commission (also referred to as CC).
 3. Where planning board or board of adjustment review or action is required, the application shall be reviewed by the Polson City-County Planning Board or the City of Polson Board of Adjustment.
- J. Zoning Conformance, Fence, and Certificate of Occupancy/Change of Use Permit Procedure.** The purpose of this permit procedure is to ensure that routine building activity complies with these regulations. These permits may be combined and processed simultaneously with permits required by the city's fire and building codes, although the development's compliance with zoning shall be determined prior to action on the building permit.

Zoning Conformance, Fence, & Certificate of Occupancy/Change of Use Permit Process Flow Chart*



*This flow chart shows a typical zoning conformance, fence, & certificate of occupancy/change of use permit process. The administrator may require additional information as site-specific development issues become apparent or other changes may occur.

1. The developer shall submit a properly completed application form, a site plan, any supporting materials necessary to demonstrate compliance with these regulations, and the required application fee with the administrator (see the application forms in Administrative Materials).
2. Within 10 working days of receiving the application and fee, the administrator shall determine whether the application is complete and sufficient for review. When an application is determined incomplete or insufficient, the administrator shall provide written notice to the developer indicating what information must be submitted for the review to proceed.
3. Within 10 working days of determining an application is complete and sufficient, the administrator shall determine whether the proposed development is in compliance with these regulations and notify the developer of the decision. If it complies, the application shall be approved and a permit shall be issued. If the proposed development fails to comply, the application for a permit shall be rejected. Conditions may be attached to the permit as described in III.L. Development that is not in compliance with previously approved subdivision or special use permits shall not be approved.
4. The administrator's decision may be appealed to the City Board of Adjustment (also referred to as the BOA) using the appeals procedure of III.Q. A notice of appeal must be filed with the administrator within 30 days after notice of the decision is issued.
5. After a permit is granted and prior to permit expiration, the developer shall notify the administrator and demonstrate that development conforms to these regulations and any conditions of approval. The administrator shall visit the site to check for conformance and, if verified, issue a certificate of compliance or occupancy. If the development is determined not to be in conformance, the administrator shall notify the developer of the deficiencies. The developer must demonstrate conformance within the original or extended approval period, reapply for a permit, or appeal the administrator's decision (See III.P., below). If voluntary compliance is not achieved a notice of violation may be issued.

K. Special Use Permit Procedure. The special use permit procedure requires public review of developments that may have a significant impact on the landscape setting, public facilities, or neighboring land uses. Special uses are those that may be compatible with the land uses permitted by right in a zoning district, but require individual review of their location, scale, design, and configuration, and may include the imposition of conditions or mitigations in order to ensure the appropriateness of the use at a particular location within a given zoning district.

A special use permit application may be submitted along with a zoning amendment or subdivision application and review may take place concurrently.

1. **Pre-Application.** The purpose of this procedure is to ensure that a properly completed application is filed.
 - a. The developer shall submit to the administrator a properly completed pre-application form, supplementary materials, and fee adopted by the governing body.
 - b. The administrator shall, within 15 working days, conduct a pre-application review unless this time period is waived by the developer. The administrator shall provide written notice to the developer indicating what information must be submitted for the review to proceed. At any time during the

review process the administrator may require additional information necessary to demonstrate compliance with these regulations.

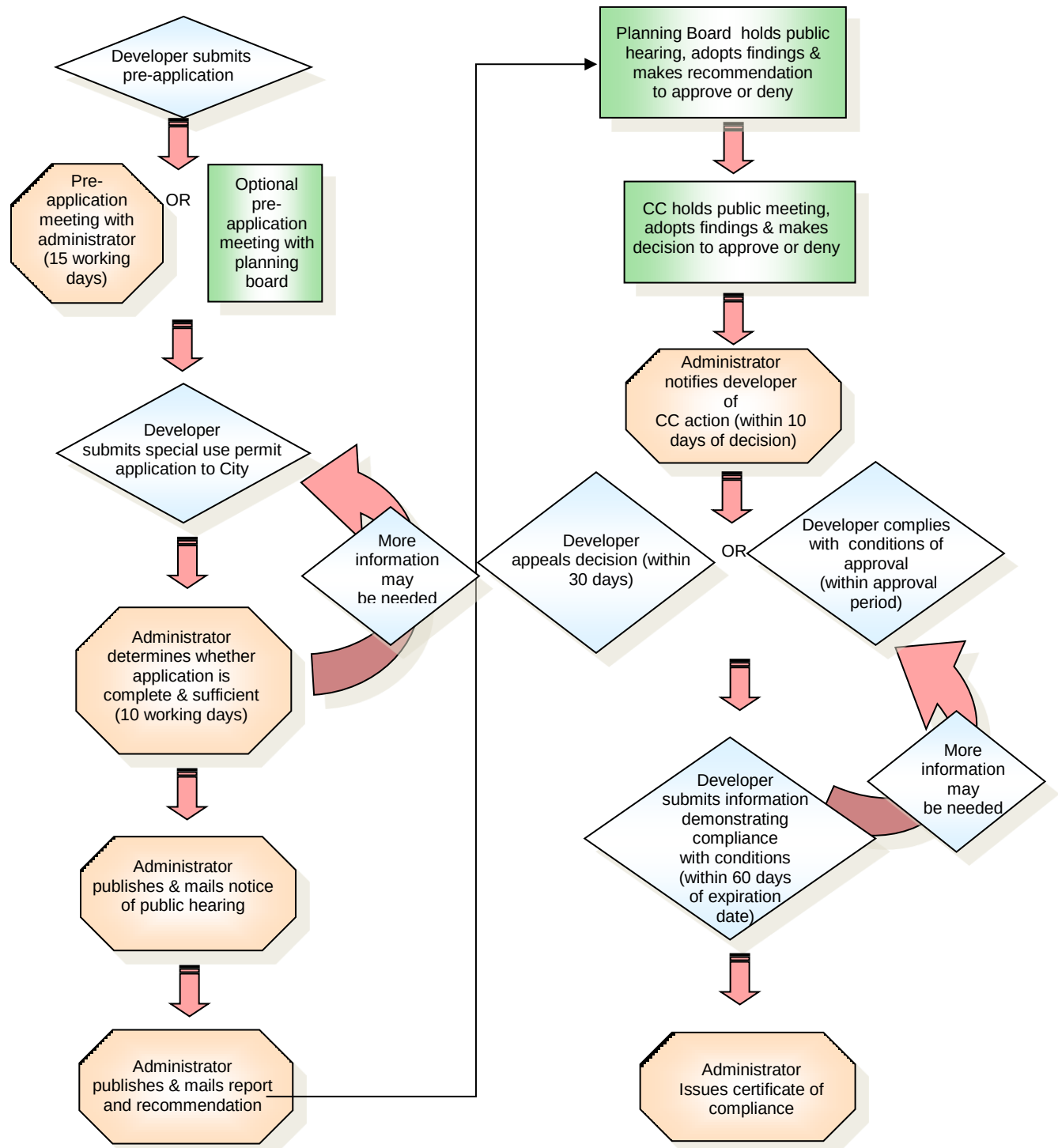
- c. Pre-application review is not a regulatory proceeding, but an opportunity for the applicant to be made aware of the requirements of these regulations. The need for a community impact report or environmental assessment shall also be determined at the pre-application review.
- d. If the developer is willing to provide written notice waiving the 15 working day requirement in K.1.b., above, a pre-application review may take place before the city-county planning board during the next public meeting for which notice may be published. At the meeting, the administrator, members of the public, and the planning board may provide feedback to the developer regarding compliance with these regulations, project design and issues to be addressed in the special use permit application.

2. Application.

- a. The developer shall submit a properly completed application form, preliminary plat or site plan, narrative describing the project in light of the evaluation criteria (see K.3., below), any supporting materials necessary to demonstrate compliance with these regulations, and the required application fee.
- b. Within 10 working days of receiving the application, supporting materials and fee, the administrator shall determine whether the application is complete and sufficient. When an application is determined incomplete or insufficient, the administrator shall provide written notice to the developer indicating what information must be submitted for the review to proceed.
- c. The administrator shall place a hearing on the proposed special use on the agenda of the next regular planning board meeting for which these notice requirements can be met, and at which time will allow for its proper consideration. Notice of the hearing shall be provided as follows:
 - i. By certified mail, at least 15 calendar days before the hearing, to the developer and all adjoining property owners (including purchasers of record under contract for deed);
 - ii. By newspaper publication, at least calendar 15 days before the hearing, one legal notice in the official newspaper; and
 - iii. By first class mail, at least 15 calendar days before the hearing, to all potentially affected public agencies and public utilities, and any person who has requested mail notice of such hearings and paid the annual fee for that service. All notices shall comply with III.M.
- d. The administrator shall prepare, or contract for preparation of a report that describes the proposed special permit use, its site, its context, and its compliance, or failure to comply, with the applicable requirements of these regulations. In preparation of the report, the administrator may seek input from the police, fire, parks, sewer and water, streets, solid waste and other departments as well as other agency and service providers including the Montana Department of Transportation, Polson School District, Mission Valley Power, Montana Department of Environmental Quality and others. In the report the administrator shall propose findings of fact and a recommendation of approval, approval with conditions or denial of the proposal for the planning board's consideration.

- e. The planning board shall conduct a hearing on the proposed special permit use following the procedure established in III.V. At that hearing, the planning board shall review the particular facts and circumstances of the proposed special use and adopt findings of fact in support of its recommendation. If the board finds the application complies with the evaluation criteria in K.3., below it shall recommend approval of the application. If the planning board finds the application fails to comply, it shall recommend denial of the application. Conditions may be attached to a recommendation of approval of any special use permit, as provided in III.L.
- f. Following the public hearing, the administrator shall forward the public comments, report, recommendation and findings to the City Commission.
- g. The CC shall then consider the request at its next meeting for which public notice posting requirements can be met. At the meeting, the CC shall review the particular facts and circumstances of the proposed special use and adopt findings of fact in support of its decision. If the CC finds the application complies with the evaluation criteria in K.3., below it shall approve the application. If the CC finds the application fails to comply, it shall deny the application. Conditions may be attached to an approval of any special use permit, as provided in III.L.
- h. Consideration of a special use permit application may be tabled for no more than 35 days.
- i. The administrator shall notify the developer and other interested parties who have specifically requested such notice of the governing body's decision within 10 days after it is made.

Special Use Permit Procedure Flow Chart*



*This flow chart shows a typical special use permit application and review process. The administrator or board may require additional information during the review, applications may be amended and other changes in the process may occur.

3. Evaluation Criteria. The CC, after weighing and evaluating the proposed use in light of the criteria set forth below, shall grant a special use permit if the application, supplemental information, public hearing and other evidence demonstrate that:

- a. The proposed use complies with the applicable specification standards, performance standards and the requirements of any base and overlay zoning districts in which the project is proposed;
- b. The proposed use, including mitigation measures, shall have no more adverse effects on the health, safety, or welfare of persons living or working in the neighborhood, or shall be no more injurious to property or improvements in the neighborhood than would any other use generally permitted (including special permit uses) in the same district. In making such determination, consideration shall be given to the location, type, height, scale, layout, and the type and extent of landscaping and screening on the site, as well as measures proposed by the developer to minimize impacts to neighborhood;
- c. Adequate facilities and services are, or will be, through the application of these regulations and the adoption of conditions, made available to serve the proposed use including police, fire, parks, sewer, water, streets, motorized and non-motorized transportation, drainage, solid waste, schools and other facilities and services as appropriate;
- d. Adequate measures shall be taken as necessary to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads; and
- e. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke, runoff or glare.

4. Exemption from Special Use Permit Review. The administrator shall have the authority to waive special use permit review of development on parcels of land that have been subdivided in accordance with the Polson Development Code since 1993 when:

- a. The use is listed as a special permit use in the zoning district (Chapter II.);
- b. The use was contemplated and reviewed under the Polson Development Code and Montana Subdivision and Platting Act (Chapter VI);
- c. The use is of the same or lesser scale as was contemplated during subdivision review. Scale shall be measured by traffic generation, water and sewer demand, storm drainage, signage and parking requirements; and
- d. All elements of the preliminary subdivision approval are complied with.

After determining the proposed development meets the requirements for use of this exemption, the administrator shall process the development request as a permitted use through the issuance of a zoning conformance permit (see III.J.). The administrator's decision may be appealed to the BOA (see III.P.). Development shall comply with all portions of the current Polson Development Code.

L. Conditions. Conditions may be imposed upon the approval of any permit or variance, if:

1. They are clearly designed to ensure compliance with one or more specific requirement of these or other adopted regulations;
2. They are directly related to the anticipated impacts of the proposed use;
3. They are roughly proportional to the anticipated impacts of the proposed use;
4. The developer offers to take specific actions in relation to the proposal that can be ensured through the implementation of a condition;
5. A list of all conditions imposed is provided to the developer with notice of the decision. Such a list shall also be made available to the public. The list shall specifically identify the provisions of the regulations that each condition was designed to implement and the evidence that was relied upon as their basis.

M. Hearing Notices. All required notices shall provide the following information.

1. Name and city and state of the developer or petitioner and the landowner (if different);
2. Legal description of the site and its address or another general description by which the public can locate it. For proposed zoning amendments, the geographic area of the district must be included;
3. Present land use at the site;
4. The proposed use, and, for subdivisions, number of lots and average lot size, description of the item sought for variance or appeal, and for zoning amendments, the general character of the proposed regulations.
5. The body (planning board, BOA, or CC) that will conduct the hearing;
6. The date, time and place of the hearing; and
7. Where applications are available for review.

N. Approval Period. Zoning Conformance, Fence, and Certificate of Occupancy/Change of Use Permits are valid for one year and Special Use Permits are valid for three years from the date of approval. During the approval period all construction must be completed and compliance with the permit demonstrated. However:

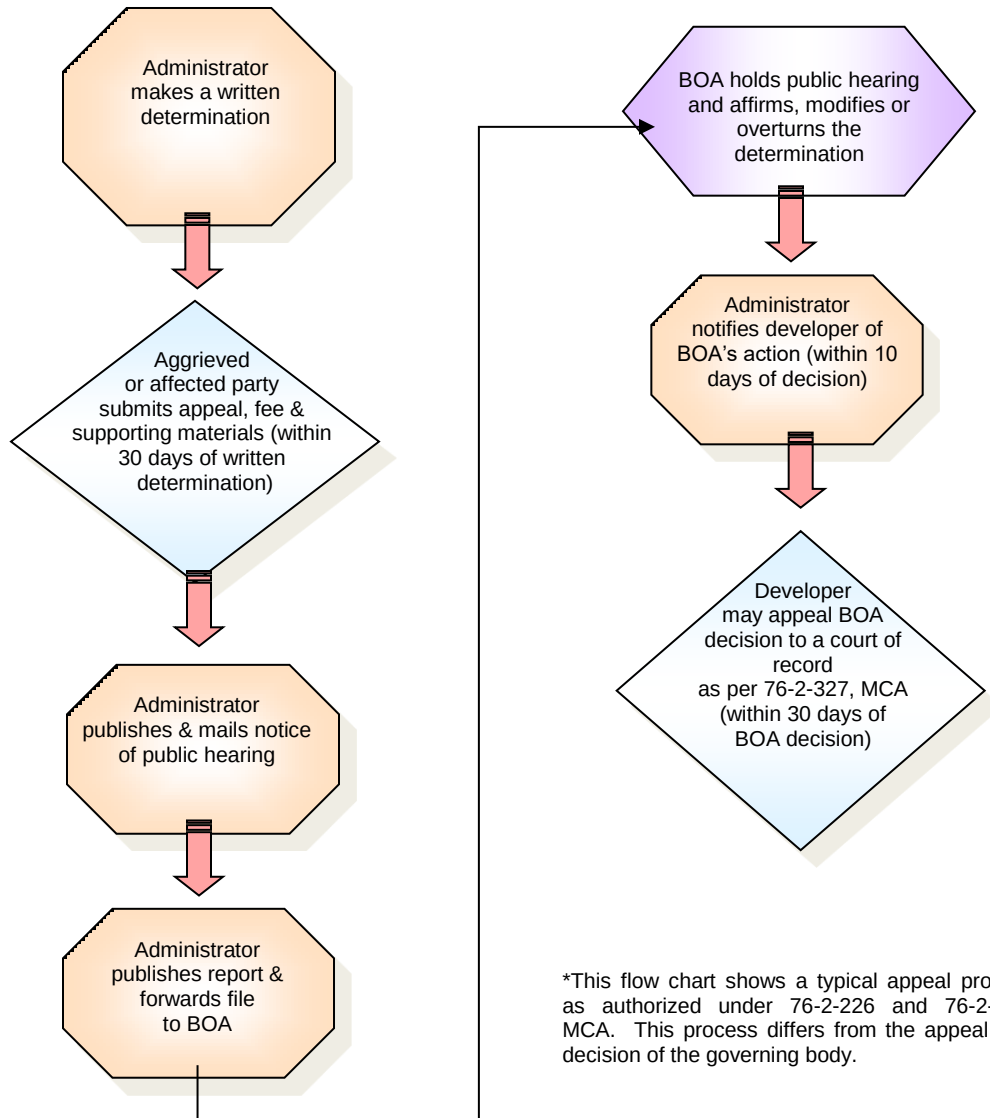
1. A permit may be extended by a development agreement, as provided in Chapter V; and
2. At the end of the approval period the permit authority (governing body, BOA or administrator, as applicable) may, at the request of the developer, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing, dated and signed by the permit authority and the developer or developer's agent. The permit authority may issue more than one extension. For a permit to be extended, the developer may be required to submit substantiating evidence justifying the request and showing good cause for extending the permit period. Zoning

conformance, fence, and change of use/occupancy permits may be extended by the administrator. Special use permits may be extended by the CC.

Division 3 – Annexation, Appeals and Variances

- O. Annexation.** Annexation of property into the city may occur prior to or in conjunction with a permit application according to the provisions of Title 7, Chapter 2, Parts 42 through 46, Montana Code Annotated. However, annexation does not guarantee permit approval. All territory which may hereafter be annexed to the city shall be zoned at the time of annexation regardless of county-adopted zoning designation. Prior to such annexation and zoning, the Zoning Administrator shall have made a recommendation to the Planning Board, and the Planning Board shall have made its investigation and shall make a recommendation to the City Commission. Public hearings on the question of zoning shall be held in conjunction with the necessary annexation procedures. See section (R) below for the zoning procedures.
- P. Zoning Appeals.** Any decision of the administrator may be appealed to the BOA as per 76-2-226 and 76-2-326, MCA.
1. The appellant shall submit a properly completed notice of appeal (Administrative Materials) and the required appeal fee and supporting materials with the administrator within 30 days after notice of the decision was issued.
 2. The administrator shall place a hearing on the appeal on the agenda of the next regular BOA meeting for which these notice requirements can be met, and at which time will permit its proper consideration within 60 days of appeal submittal. Public notice for an appeal shall meet the requirements of III.M., above, be published at least once in the official newspaper, and mailed to all adjacent landowners at least 15 but not more than 30 days prior to a public hearing.
 3. The administrator shall publish a summary report that includes the decision and the surrounding circumstances, and forward it, along with a copy of the file, to the BOA.
 4. The BOA shall conduct a hearing on the appeal following the procedure established in III.V. At the hearing, the BOA shall determine whether the decision being appealed is in compliance with these regulations, and affirm, modify, or overturn that decision accordingly. The decision shall be in writing and contain a summary of the facts relied on as the basis for its decision.
 5. Consideration of the appeal may be tabled for no more than 35 days.
 6. The administrator shall notify the appellant and interested parties who have specifically requested such notice of the BOA's decision within 10 days after it is made.

Administrative Appeal Process Flow Chart*



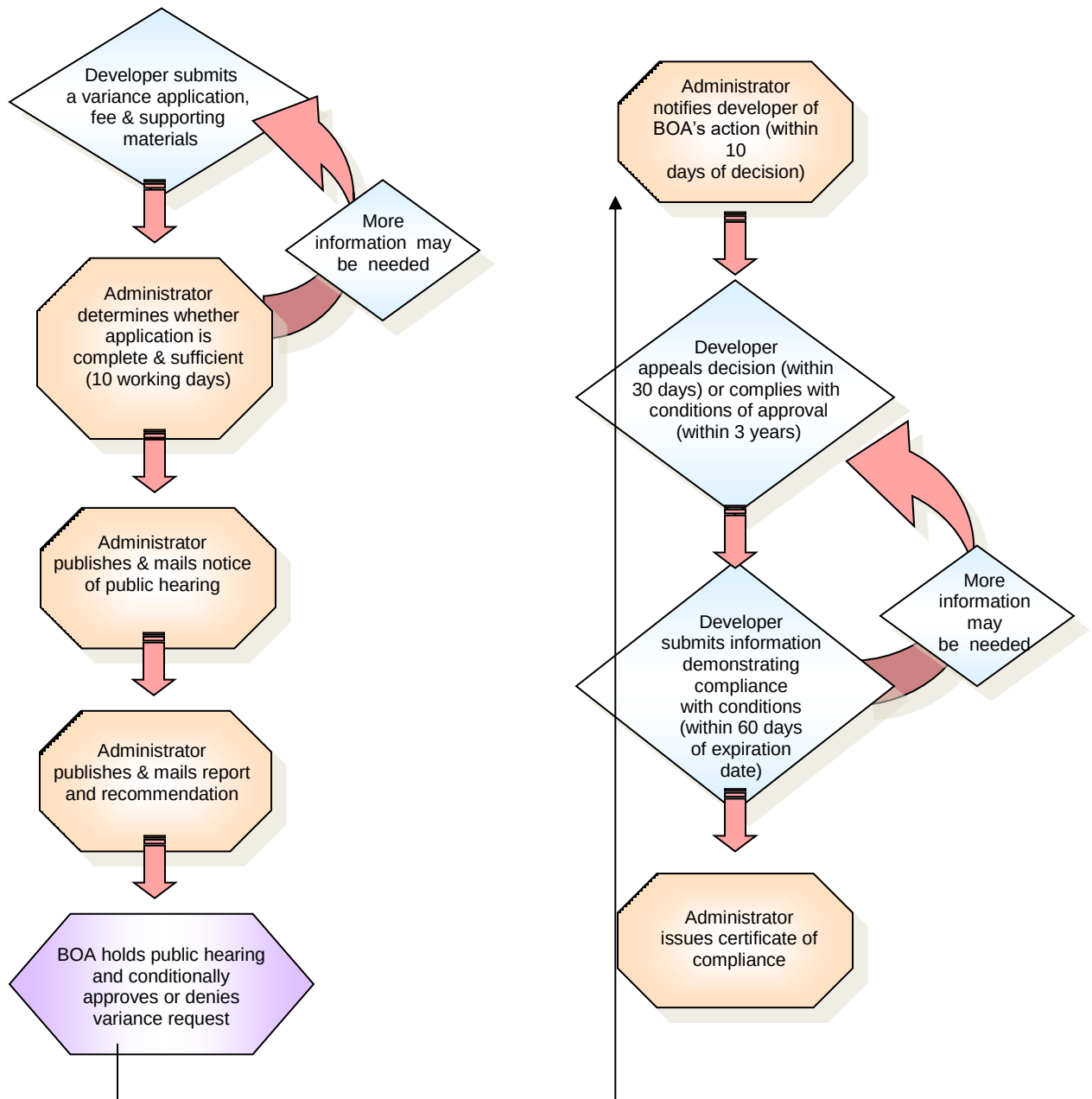
*This flow chart shows a typical appeal process as authorized under 76-2-226 and 76-2-326, MCA. This process differs from the appeal of a decision of the governing body.

Q. Zoning Variances. Variances provide relief for landowners who, due to some unique characteristic of their property, would suffer unnecessary hardship if these regulations are strictly enforced. Variances may be granted, but only as provided here.

1. The developer shall submit a properly completed application form (see Administrative Materials), the required supporting materials including a narrative evaluating the variance request under the review criteria (Q.6., below), and the required application fee with the administrator.
2. Within 10 working days of receiving the application, supporting materials and fee, the administrator shall determine whether the application is complete and sufficient. When an application is determined incomplete or insufficient, the administrator shall provide written notice to the developer indicating what information must be submitted for the review to proceed.
3. Within 60 days of the application being deemed complete and sufficient, the administrator shall place a hearing on the agenda of the next regular BOA meeting for which the notice requirements can be met and at which time will permit its proper consideration. Notice for a variance shall meet the requirements of III.M., above, be published at least once in the official newspaper and mailed to all adjacent landowners at least 15 but not more than 30 days prior to a public hearing.
4. The administrator shall prepare, or contract for preparation of a report that describes the proposed variance, its site, its context, an evaluation of the request under the variance criteria. The report may include a recommendation for approval, approval with conditions, or denial.
5. The BOA shall conduct a hearing on the proposed variance following the procedure established in III.V., below. At that hearing, the BOA shall review the particular facts and circumstances of the proposed variance and develop findings and conclusions in support of its decision.
6. **Review Criteria.** The BOA shall approve a variance only upon finding that:
 - a. The need for a variance results from physical limitations or unique circumstances related to the lot or parcel on which the variance is requested;
 - b. The failure to approve the variance will result in undue hardship because without a variance, strict compliance with the terms of these regulations will limit the reasonable use of the property and deprive the applicant of the rights enjoyed by other properties similarly situated in the district;
 - c. The alleged hardship has not been created by action of the owner or occupants;
 - d. Approval of the variance will not have a substantial adverse impact on neighboring properties or the public;
 - e. The variance is necessary to permit a reasonable conforming use; and
 - f. Granting of the variance will observe the spirit of these regulations and provide substantial justice.
 - g. Additional findings may be required for variances in airport overlay zones and shoreline buffers.
 - h. Conditions may be attached to the approval of any variances, as provided in III.L.

7. Consideration of a variance may be tabled for no more than 35 days.
8. The administrator shall notify the developer and interested parties who have specifically requested such notice of the BOA's decision within 10 days.
9. Approvals valid for 3 years. Variances shall be valid for 3 years from the date of approval, during which time all construction associated with the variance must be completed and compliance with any conditions demonstrated, unless extended by the BOA for a period not to exceed one year. Substantiating evidence must be submitted along with a written extension request to the BOA and good cause must be shown to justify any extension hereunder. Upon receiving a written request and attached evidence, the BOA shall determine whether the requested extension shall be granted, and its decision shall be appealable in like manner as elsewhere provided herein.

Zoning Variance Process Flow Chart*



*This flow chart shows a typical zoning variance application and review process. This process differs from the subdivision variance process (Chapter Six). The administrator or BOA may require additional information during the review, applications may be amended and other changes in the process may occur.

Division 4 – Amendments

R. Amendments. Any person may petition for the amendment of the zoning districts map and these regulations. The amendment procedure shall be as provided here and in 76-2-303 and 76-2-205, MCA. Amendments may also be initiated by the planning board or administrator, in which cases steps 1.a. and 1.b., below, will not be required.

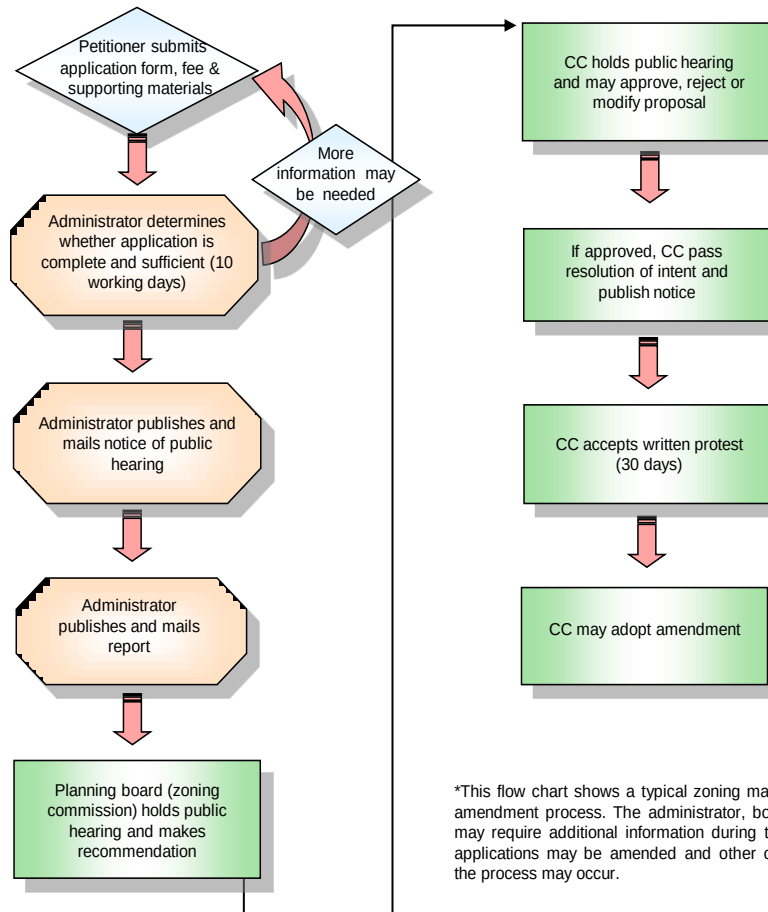
1. Amendment Process

- a. The petitioner shall submit a properly completed application form (Administrative Materials), the required supporting materials, including a narrative evaluating the amendment request under the review criteria (III.R.2., below), and the required application fee with the administrator.
- b. Within 10 working days of receiving the application, supporting materials and fee, the administrator shall determine whether the application is complete and sufficient. When an application is determined incomplete or insufficient, the administrator shall provide written notice to the petitioner indicating what information must be submitted for the review to proceed.
- c. When the application is determined to be complete and sufficient, the administrator shall place a hearing on the application for a zoning amendment on the agenda of the next regular planning board / zoning commission meeting for which the notice requirements can be met, and at which time allows for its proper consideration.
- d. The administrator shall publish notice of the hearing in the official newspaper at least 15 but not more than 30 days before the hearing. The administrator may also mail notice to all adjacent landowners during that timeframe. The notice shall be as required in III.M.
- e. The administrator shall prepare, or contract for the preparation of, a report that describes the proposed amendment and how it complies, or fails to comply, with and the amendment criteria. The report may include a recommendation for approval, approval with modifications or denial.
- f. The planning board, acting as a zoning commission, shall conduct a hearing on the proposed amendment following the procedure established in III.V. At the hearing, the planning board / zoning commission shall determine whether the proposed amendment meets the amendment criteria. The planning board / zoning commission shall review the particular facts and circumstances of the proposed amendment and develop findings and conclusions that support its recommendation that the CC approve, approve with modifications, or disapprove it accordingly.
- g. Action on a proposed amendment may be tabled, but for no more than 35 days.
- h. The administrator shall convey the planning board's / zoning commission's recommendation and public comments to the CC and, unless the application is withdrawn, place a hearing on the agenda of the next regular CC meeting for which the notice and posting requirements can be met, and at which time allows for its proper consideration. The notice shall be as required by III.M.
- i. The CC shall conduct a hearing on the proposed amendment following the procedure established in III.V. At the hearing, the CC shall consider the recommendation of the planning board / zoning

commission and all testimony received, then approve, reject, or modify and approve the amendment. Action on the proposed amendment may be tabled, but for no more than 35 days.

- j. If approved or approved with modifications, the CC shall pass a resolution of intention to create or modify a zoning district and/or regulations and publish notice that meets the requirements of III.M. once a week for 2 weeks in the official newspaper.
- k. For 30 days after first publication of the notice, the CC shall accept written protest.
- l. An amendment to the zoning may not become effective except upon favorable vote of two-thirds of the present and voting members of the CC if a protest against a change is signed by the owners of 25% or more of:
 - i. The area of the lots included in the proposed change; or
 - ii. Those lots 150 feet from a lot included in a proposed change.
- m. Within 30 days of the expiration of the protest period, the CC may adopt the amendment if the requirements of this section III.R. are complied with.
- n. At the conclusion of the amendment process, the administrator shall notify the petitioner and interested parties who have specifically requested such notice of the CC decision within 10 days.

Zoning Map and Text Amendment Flow Chart*



2. Amendment Criteria.

a. Zoning amendments shall be made:

- i. In substantial conformance with the growth policy;
- ii. To secure safety from fire and other dangers;
- iii. To promote public health, safety, and general welfare; and
- iv. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

- b. In reviewing and making recommendations or decisions on zoning amendments, the administrator, board, and CC shall also consider:
 - i. The provision of adequate light and air;
 - ii. The effect on motorized and non-motorized transportation systems;
 - iii. The promotion of compatible urban growth in and around the city;
 - iv. The character of the district, and its suitability for particular uses;
 - v. Conserving the value of buildings;
 - vi. Encouraging the most appropriate use of the land;
- c. Other criteria include whether the amendment:
 - i. Corrects an inconsistency in the zoning; and
 - ii. Addresses changing conditions or furthers a specific public challenge such as the need for affordable housing, economic development, mixed use development or sustainable environmental features.

S. Administrative Reviews.

- 1. After each regular meeting of the Montana Legislature, the city administrators shall review these regulations and present recommendations (if any) for map and text amendments to the City Commission.
- 2. The review may include the number and types of permit requests, including variances, and focus on what is working, what is not, and what should be clarified, changed or eliminated. The review should focus on whether these regulations are helping to carry out the applicable goals, objectives and policy statements of the growth policies. Case studies using photos and graphics may be used, including before and after conditions as appropriate.
- 3. The reviews should address legislative changes, changes in transportation and infrastructure plans, and other changing circumstances that impact land use and the built environment.

Division 5 – Hearing Procedures

T. Hearing Procedure. This procedure shall be followed in all hearings before the planning board, BOA and CC.

- 1. The presiding officer shall announce the purpose and subject of the hearing.
- 2. The presiding officer shall determine whether proper notice of the hearing has been provided. If proper notice has not been provided, the hearing shall be re-scheduled.

3. The presiding officer shall ask if any member wishes to declare a conflict of interest in the matter to be heard, and excuse anyone who declares such a conflict from participation in the hearing.
4. The presiding officer shall ask the administrator to present a report on the proposal being considered.
5. The presiding officer shall direct questions from members to the administrator. Questions asked at this time shall be solely for the purpose of clarifying the location and nature of the proposed development.
6. The presiding officer shall remind those present that all statements given must address the merits of the proposed development as measured by its compliance or lack of compliance with these regulations and shall be addressed to the board, BOA or CC as a whole.
7. The presiding officer shall request a statement from the developer or a representative, or in appeals or hearings, the appellant or a representative. Members may ask questions following this statement, with all questions and replies directed through the presiding officer.
8. Following the statement of the developer or appellant, the presiding officer shall ask for statements from the public. Anyone giving a statement shall begin by stating his or her name and physical address. Members may ask questions following this statement, with all questions and replies being through the presiding officer.
9. When all statements have been given, the presiding officer shall ask if anyone who gave a statement wishes to speak in rebuttal to other statements or clarify his or her statement. Questions from members may follow each rebuttal or clarification.
10. All parties shall be courteous and respectful. The presiding officer has the authority to keep order, which may include closing a public hearing at any time if public comment becomes unproductive and excusing discourteous persons from the meeting.
11. The presiding officer shall close the public hearing and call for discussion, resulting in action, as provided by these regulations. A motion shall be made to approve, approve with conditions or modifications, or deny an application. (In cases where the board makes a recommendation instead of a final decision, a motion shall be made to recommend approval, approval with conditions or modifications, or denial of an application.) Subject to limits established in these regulations or state law, items for consideration may be tabled. Review period extensions, granted at the option of the developer, may be necessary as per state statute or these regulations.
 - a. **Planning Board Action.** Recommendations may be made by simple majority of those board members in attendance.
 - b. **Board of Adjustment Action.** Administrative appeals, variances and other statutorily authorized items regarding matters within the city limits shall be heard by the Polson BOA. The concurring vote of four members is required for the Polson BOA to approve a motion
 - c. **CC Action.** A quorum is required for the CC to take action, except for zoning amendments within the city limits when a valid protest petition has been submitted in accordance with 76-2-305, MCA, where two-thirds majority of present and voting members is required to pass an amendment.

12. Written statements, plans, photographs, and other materials offered in support of statements at a hearing are part of the hearing record and shall be retained by the city.

U. Additional Hearing Procedures. These procedures may be used, without prior notice, to facilitate conduct of large or controversial hearings.

1. In order to allow everyone an opportunity to speak and ensure completion of the agenda, time limits may be imposed on public comment.
2. Any person who wishes to make a statement may be required to register his/her intention to do so with the administrator before the hearing. The presiding officer shall then use the register to call upon persons to present their statements.

V. Hearings To Be Recorded. The administrator shall keep an audio record of all hearings on file for at least three years after the final hearing, including appeals hearings, on the development.

W. Decision Record. All planning board, BOA, and CC recommendations and decisions shall be supported by findings of fact that document compliance or lack thereof with the applicable growth policy, subdivision regulations, specification and performance standards, etc. Findings of fact may be established by reference to application materials, the administrator's report, adopted regulations, outside sources and testimony at the hearing.

Division 6 – Enforcement, Violations and Penalties

X. Certificate of Compliance. A certificate of compliance indicates that an on-site inspection has shown the development complies with these regulations, including any conditions imposed upon its approval. Occupancy of a development without a certificate of compliance is a violation of these regulations. Certificates of compliance may be combined with certificates of occupancy required by the city's fire and building codes.

1. A certificate of compliance may be issued when development is complete and before any land or building is occupied. A certificate of compliance is not required for the sale or lease of an existing parcel, or for any development activity that is exempt from these regulations, as provided in III.C. or III.D.
2. A temporary certificate of compliance may be issued to permit temporary uses of a building in cases where weather prevents the prompt completion of required site improvements. No such certificate shall be valid for more than 120 days.
3. Issuance of a certificate of compliance shall not be construed as approval of any violation of these regulations that may have been undiscovered during the inspection.

Y. Violations. A person violates these regulations whenever he or she:

1. Proceeds with an activity for which a permit is required by III.B. without having obtained a permit;
2. Makes any misrepresentation in any application for a permit required by these regulations;

3. Occupies a development in the city without obtaining a certificate of compliance, as required by III.X., above;
4. Fails to fulfill any condition imposed on the approval of an application for a permit;
5. Fails to maintain any improvement required for compliance with these regulations or any permit granted under these regulations;
6. Uses land or buildings in violation of the requirements of these regulations;
7. Erects a building or other structure in any way not consistent with the requirements of these regulations;
8. Engages in the development of land in any way not consistent with the requirements of these regulations;
9. Obscures, obstructs, removes or destroys any notice required to be posted or otherwise given under the terms of these regulations;
10. Fails to comply with any lawful order issued under the authority of these regulations; or
11. Disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of these regulations.

Z. Responsibility For Violations. The following persons may be jointly or severally responsible for violations of these regulations and subject to its enforcement provisions (also referred to as responsible party):

1. Any owner of property on which a violation occurs;
2. Any architect, engineer, planner, surveyor, builder, contractor, agent or any other person who knowingly participates and assists, directs, creates or maintains a situation that constitutes a violation of these regulations; and
3. Any tenant or occupant who has control over or responsibility for, use or development of the subject property.

AA. Enforcement Process. The process for enforcement of these regulations shall be as described here.

1. The administrator shall notify the occupant (and owner, if they are not the same) of the violation by certified mail and/or posting on the site. The notice shall describe the violation, cite the section(s) of these regulations being violated, and order the responsible party to attain compliance within 30 days.
2. The notice of violation may include a “stop work order” that requires work to cease, states the specific work to be stopped, the specific reasons for the ordered stoppage, and the conditions under which the work may resume. If the activity does not cease, the administrator shall ask the city attorney to take prompt action as authorized by 76-2-308, MCA, to end the unpermitted activity and, if a permit is not subsequently issued, to require restoration of the site to its original condition. Restoration may include re-establishment of vegetative cover where sites have been graded in violation of these regulations.

3. Any person who receives a notice of violation may:
 - a. Request inspection by the administrator to show that compliance has been attained within the 30 days allowed, or
 - b. File a notice of appeal of the administrator's notice, following the procedure in III.Q., above.
4. If voluntary compliance is not attained or a notice of appeal is not filed within 30 days, the administrator shall ask the city attorney to begin legal action, as authorized by 76-2-308 MCA, against any responsible party who fails to attain compliance within the specified time, or show, on appeal, that a violation has not occurred.
5. This enforcement procedure may be accelerated where the administrator finds that public health and safety are endangered by a violation. In such cases, the administrator shall ask the city attorney to take immediate action to end the danger to public health and safety.

BB. Penalties.

1. Penalties for zoning violations shall be as provided in 76-2-315, MCA.
2. Any person who violates these regulations may be required by court order or other action or proceedings to abate or remediate a violation or otherwise restore the premises to the condition in which it existed before the violation.

CC. Withhold Permit, Utilities Service or Other Development Authorization.

1. The administrator, board, BOA or other authorized party may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements on property upon which there is an uncorrected violation of a provision of these regulations or of a condition or qualification of a permit, certificate, approval or other authorization previously granted. This enforcement provision may be applied regardless of whether the current property owner or applicant is responsible for the violation in question.
2. The administrator, board, BOA or other authorized party may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned or being developed by a person who owns, develops or otherwise causes an uncorrected violation of a provision of these regulations or a condition or qualification of a permit, certificate, approval or other authorization previously granted. This enforcement provision may be applied regardless of whether the property for which the permit or other approval is sought is the property in violation. For purposes of this section, a "person" is defined as any individual or business entity with more than a 20% interest in the subject property.
3. No municipal utility service shall be provided to any development that is not in full compliance with these regulations.

Division 7 – Nonconformities and Existing Nuisances

DD. Nonconforming Uses, Buildings and Lots. A nonconforming use, building or lot complied with the regulations that were in effect at the time of its development, but would not comply with these regulations, if submitted for approval after their effective date. Nonconforming uses, buildings and lots may continue as provided here.

1. Any nonconforming use abandoned for more than 18 months shall be terminated. Abandonment shall not be measured by the owner's intent, but solely by the fact that use ceases for a period of 18 or more months.
2. There shall be no limit on the maintenance and repairs of nonconforming uses or buildings, provided that:
 - a. No such activity increases the degree of nonconformity (see definition for nonconforming);
 - b. No permit for such activity shall be issued until existing on-site sewage disposal systems are abandoned by connection to the municipal sewerage system and;
 - c. All such activity complies with the city's fire and building codes.
3. Requests for minor changes of occupancy in nonconforming buildings or lots shall be processed as applications for special use permits, with compliance with sub-paragraph (3.a,b,c, and d below) added to the determinations made on the special use permit criteria. The use of nonconforming buildings or lots may be changed only where:
 - a. The new use is no more intense (with intensity measured by anticipated traffic and noise generation, the number of parking spaces required, the number and size of signs proposed, and similar factors) than the existing use;
 - b. The degree of nonconformity is not increased;
 - c. Existing on-site sewage disposal systems are abandoned by connection to the municipal sewerage system and;
 - d. The proposed use complies with the city's fire and building codes. No permit is required for the continuing residential use of a nonconforming building or lot where there is simply a change in the occupants but not a change in land use.
4. Nonconforming buildings that have been destroyed by catastrophic event may be replaced upon approval of a zoning conformance permit, with compliance with this sub-paragraph (4.a,b,c, and d below) added to the determinations made by the administrator in deciding whether or not to approve the application. Other requests for replacement of nonconforming buildings shall be processed as applications for variance.

Nonconforming buildings may be replaced only where:

- a. The degree of nonconformity is not increased;

- b. The degree of nonconformity is decreased to the fullest extent possible;
 - c. Existing on-site sewage disposal systems are abandoned by connection to the municipal sewerage system and;
 - d. All construction complies with the city's fire and building codes.
5. Nonconforming buildings may be altered, including enlargements and expansions, when the proposed alteration complies with all applicable lot and building standards. For example, a building with a nonconforming front setback may be expanded to the rear so long as the rear expansion complies with the applicable rear setback and other lot building standards.
 6. Nonconforming lots may be developed with a permitted or special permit land use in the district in which they are located following the procedures in III.J., and III.K., above. Development on nonconforming lots must comply with the building standards of the zoning district and all performance standards unless a variance is granted by the BOA following the procedures in III.Q., above. Nonconforming lots may not be adjusted in size or shape to increase the degree of nonconformity.
 7. Temporary nonconforming uses or structures shall not be made permanent without full compliance with these regulations. For example, a garage sale on a lot in a residential district cannot be made a recurring, regularly scheduled event. Similarly, a canvas wall tent erected for a family reunion in a location that does not comply with a setback requirement may not include wooden or similar walls or other features that would make it a permanent structure.

EE. Existing Nuisances. Unlike other sections of these regulations that apply to existing uses or buildings only when they are changed, this section applies to all existing uses and buildings. Its purpose is to provide a basis for the elimination of existing nuisances.

1. Existing conditions that violate the performance standards of Chapter IV are declared to be public nuisances and, as such, violations of these regulations subject to the enforcement procedures of III.CC, above.

2. Outdoor Storage

- a. In Residential Zoning Districts. Outdoor storage in the LRZD, MRZD, OTZD, XRZD, RVZD and RZD that does not comply with these regulations is declared to be a public nuisance and, as such, a violation of these regulations subject to the enforcement procedures of III.CC, above.
- b. In Commercial, Industrial and Transitional Zoning Districts. No commercial or industrial storage may be expanded, except in compliance with these regulations.

CHAPTER IV – PERFORMANCE STANDARDS

- A. What This Chapter Does.** This chapter establishes detailed performance standards, with which all development must comply.

Division 1 – Protecting Flathead Lake and Other Natural Assets – Avoiding Natural Hazards

- B. Runoff Management.** A runoff management plan (storm water design report) shall be implemented by all developments that are adjacent to the lakeshore or that add or replace more than 5,000 square feet of impervious surface. Such plans shall be prepared by a qualified professional and reviewed by the City Engineer. Runoff management plans shall meet the specifications of the *City of Polson Standards for Design and Construction*.

Runoff management plans shall:

1. Identify runoff and erosion hazard areas on the site;
2. Show how the retention of existing vegetation will be maximized (including the protection of existing vegetation during construction) and land disturbance minimized;
3. Show how the area disturbed by construction at any one time will be minimized and how disturbed areas will be stabilized during the construction period;
4. Show how disturbed areas will be promptly, permanently stabilized by revegetation or structural techniques;
5. Show how runoff velocities will be minimized and drainageways will be prepared to handle any acceleration or increase in runoff;
6. Show how the additional volume of runoff generated will be retained on-site and absorbed, evaporated, or released at the pre-development rate of release;
7. Show how sediment resulting from accelerated soil erosion will be retained on site;
8. Show how water quality in adjoining or nearby streams or wetlands will be protected by retention of existing vegetation, installation of vegetative filter strips, and similar means;
9. Show how groundwater quality will be protected, particularly in the WPOD; and
10. Show how the future maintenance of runoff management measures (including earthwork, plantings and structures) will be provided.

- C. Shoreline Buffers (20 feet in RZD).** A shoreline buffer is a structural setback designed to protect water quality and the natural characteristics of the land/water interface where only limited development and vegetation disturbance is allowed to occur. It includes the 100-year floodplain or special flood hazard area, all wetlands adjacent to the shoreline, and the land area within 50 feet of the high water line of the lake or river. The Lakeshore Protection Regulations should be consulted prior to development within 20 feet of the high water mark of Flathead Lake.

1. Shoreline buffers shall be left in wetlands, riparian, hay meadow, or other vegetation capable of serving as an effective vegetative filter strip. Shoreline buffers may, however, be disturbed as follows:
 - a. Clearing and grading to prepare for plantings and other activities required to restore or enhance the beauty and function of wetlands and riparian areas;

- b. Repair or replacement of existing irrigation works, roads, bridges, boat houses, pumping facilities, utility lines, and similar structures;
 - c. Construction of new roads, bridges, boat houses, pumping facilities, and utility lines, provided that the area disturbed by such work is minimized;
 - d. Construction of pedestrian and bicycle trails of a maximum 10 feet in width, including associated benches and picnic tables;
 - e. Installation of boat ramps, piers, docks, and observation decks provided that such structures disturb no more than 10% or 24 lineal feet of shoreline, whichever is less, of the lake frontage on any lot or parcel; and
 - f. Development of marinas, as provided in II.P.4.h.
2. Requirements. When a permit or approval is sought for land that is required to contain a shoreline buffer, the following apply:
- a. The developer shall submit a plan showing all areas within the buffer area that are to be disturbed, the extent of disturbance, and plans to reclaim, revegetate and protect water quality.
 - b. Disturbances of the setback and vegetative buffer areas shall incorporate necessary measures to limit channelization and shall be limited to those exceptions listed in C.1., above.
 - c. The plan shall be reviewed by the administrator and approved by the appropriate body (for example, administrator for a zoning conformance permit, CC for a subdivision application). Modifications to the plan may be required as a condition of approval.
 - d. The developer shall implement all approved plans as required. Non-compliance shall be considered a violation of these regulations (Chapter III).
3. All exceptions listed in C.1., above, shall comply with city, county, tribal, state and federal shoreline, floodplain and wetlands protection standards. Development for which a permit is required by city, county, tribal or state law or the Clean Water Act ("404" permits) shall:
- a. Demonstrate compliance with this performance standard by submitting the approved permit with the application for a permit required by these regulations, or
 - b. Show that a complete application for the permit has been filed, and accept approval of that permit as a condition of compliance with these regulations.

D. Hillside Development

1. Lot Coverage

- a. The maximum lot coverage specification standards established in Chapter II are for development on slopes of 0-8%. Above 8%, the maximum lot coverage permitted shall be as shown in Table IV.1., except as provided in b., below.

Table IV.1 Maximum Lot Coverage By Slope – All Zoning Districts

Slope*	Maximum Lot Coverage
0-8%	Determined by the character of the zoning district – see the specific zoning districts in Chapter II
9-35%	With slight to moderate erosion hazard ¹ – 20% Severe erosion hazard – 15%
36% plus	1% by right, up to 10% maximum with runoff management plan and engineer's certification (see b. below)

*"Slope" shall be the average natural slope of the entire lot.

- b. Exception. On lots with an average slope 9-35% where a suitable building site exists², the maximum allowed lot coverage percentage is the maximum allowed for slopes of 0-8%, if the following conditions are met:

- i. A runoff management plan meeting the requirements of IV. B (above) is submitted; and
- ii. An engineer or architect licensed in the State of Montana certifies the development adequately addresses all safety, slope stability and erosion control concerns based on soil types and geologic conditions prior to lot disturbance.

2. **Wildfire Safety.** At the discretion of the administrator, any proposed development may be evaluated by the Polson Fire Chief for the potential fire hazard where vegetation types, water supply, access, and the area's fire history shall be considered. Conditions of approval may include fuels reduction, water supply improvements, access improvements, requiring buildings to be set back from slopes and other fire safety improvements.

- E. **Water Quality.** All developments shall comply with state and federal water quality standards. Developments for which a state or federal permit to discharge is required shall:

1. Demonstrate compliance with this performance standard by submitting the approved permit with the application for a permit required by these regulations, or

¹ Soil erosion hazard ratings may be found at <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>

² For the purposes of this section, a suitable building site is a reasonably shaped area at least 2,500 square feet in size on a ≤ 35% slope, that is accessible by a 12-foot wide driveway with a maximum grade of 12%, is located more than 4 feet above seasonal high groundwater and outside of required building setbacks, and that has a maximum 5% slope for the initial 20 feet from the primary access road when accessing a collector or arterial street.

2. Show that a complete application for the permit has been filed, and accept its approval as a condition of compliance with these regulations.

F. Air Quality. All developments shall comply with state and federal air quality standards. Developments for which a state or federal air quality permit is required shall:

1. Demonstrate compliance with this performance standard by submitting the approved permit with the application for a permit required by these regulations, or
2. Show that a complete application for the permit has been filed, and accept its approval as a condition of compliance with these regulations.

G. Hazardous Materials.

1. Any development that generates, handles, stores, or disposes of hazardous materials shall demonstrate continuing compliance with state or federal requirements for such activities, and, within the city limits, with the applicable requirements of the city's fire and building codes.
2. All applications for permits for such uses shall be accompanied by an initial list of hazardous chemicals, or the materials safety data sheets for such chemicals, proposed to be on the site, as required by Sections 311-312 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 USC 1101-11050, as amended). No permit shall be approved until the fire department has reviewed this list and indicated that it has the capability to effectively respond to an emergency at the proposed development. No development to which the fire department cannot effectively respond shall be approved.

H. Floodplain. All development within or partially within a special flood hazard area shall comply with the local floodplain regulations required for participation in the National Flood Insurance Program. See also section C. Shoreline Buffers, above.

I. RESERVED.

Division 2 – Providing Adequate Infrastructure

J. Municipal Utilities. All developments, and all lots or parcels within a development, shall have direct access to municipal water and sewer utilities in compliance with the current edition of the *City of Polson Standards for Design and Construction*. Provision of utilities, including any extension of mains, lift stations, stormwater facilities and other infrastructure necessary to serve the development shall be the responsibility of the developer, although the city may choose to bear the costs of providing larger facilities to provide for future development.

K. Private Utilities.

1. All developments, and all lots or parcels within a development, shall have direct access to electric power and, where available, cable television. Private utilities shall be provided by the developer, to the specifications required by the individual utilities.

2. Wherever such service is available, utilities shall be placed underground, with the connections to each lot made before street surfaces are constructed.

L. Easements. No building shall be placed, nor woody vegetation planted, in any utility easement, public or private. If approved by the City Commission, fences with a gate or separable section may be constructed across municipal utility easements. Fences across other easements must have approval of the affected utility. Note that irrigation companies and districts are considered to be utilities for the purposes of this performance standard.

M. Vehicular Access.

1. All developments, and all lots or parcels within a development, shall have safe access to a dedicated street or road that complies with the *City of Polson Standards for Design and Construction*.
2. Exception:
 - a. Multiple-family dwelling complexes, PUDs, commercial complexes RV/campground developments and mobile home parks shall provide private internal streets; and
 - b. Vehicular access to parking spaces, garages and accessory buildings may come from an alley.
3. Provision of access, including street and alley extensions, shall be the responsibility of the developer, although the city may choose to participate in the costs of extending collector streets to serve future development.

N. Access Driveways. All points of access to public streets, including residential driveways, shall comply with the detailed performance standards for Off-Street Parking and Loading Areas (O., below) and the *City of Polson Standards for Design & Construction*.

O. Off-Street Parking. Unless otherwise indicated in these regulations, all developments shall provide off-street parking and loading areas in compliance with the following detailed performance standards for Off-Street Parking and Loading Areas, except in the CBZD, HCZD, RZD, and TZD, where reliance on shared parking areas and on-street parking may be permitted. Snow storage shall not be allowed to reduce the size of required off-street parking or loading areas. Parking areas must comply with the Landscape Performance Standards of IV.W. Driveways must adhere to Americans with Disabilities Act standards as applicable. The required number of handicapped parking spaces with the required dimensions shall be provided pursuant to federal law.

1. **Purpose.** These performance standards are intended to prevent traffic congestion by requiring provision of adequate off-street parking and loading areas.
2. **Off-Street Parking Required.** Except as indicated in 6., 7. and 8, below, all uses and buildings shall provide at least the minimum number of off-street parking spaces required by Table IV.2. Off street parking for different land uses in the same building shall be calculated separately. Parking areas shall have properly graded and drained surfaces. Note that a runoff management plan will be required for any parking area of more than 5,000 square in size: See IV.B., above.

- 3. Off-Street Parking Requirements for Uses Not Listed.** The classification of uses and the off-street parking requirements for uses not listed in Table IV.2 shall be determined by the administrator based on:
- a. The most similar land use listed in Table IV.2;
 - b. Parking requirements from other jurisdictions; and
 - c. Published sources of parking information such as those produced by the Institute of Transportation Engineers and the American Planning Association.

Any person who disputes a decision of the administrator may request a review of that decision using the appeals procedure of III.P.

- 4. Location of Off-Street Parking.** Required off-street parking spaces shall be within 600 feet of a main entrance of the use or building served, except for spaces serving a dwelling, which shall be within 200 feet of the main entrance of the dwelling unit served.
- 5. Control of Parking.** Off-street parking shall generally be provided on the same lot or parcel, and under the same ownership as the use it serves, but two or more uses may share parking where:
- a. The total number of spaces provided meets the minimum standards for the number of spaces required for all buildings or uses served, and
 - b. A contract providing for shared parking for a period of at least 20 years is executed before approval of a permit and recorded before issuance of a certificate of compliance.

In such cases, the required off-street parking may be located on the lot or parcel serving one of the uses.

- 6. Exception: Reduction in Shared Off-Street Parking Spaces.** Up to a 30% reduction in the number of parking spaces required for shared off-street parking may occur under the following circumstances:
- a. When at least 50% of the parking spaces required by this section are for primarily “night-time” uses such as theatres, bowling alleys, bars and related uses, and the parking spaces to serve those uses are provided by “day-time” uses such as banks, offices, furniture stores, manufacturing, large-scale retail, wholesale and related uses;
 - b. When at least 50% of the parking spaces required by this section for primarily “day-time” uses may be supplied primarily by “night-time” uses;
 - c. When at least 60% of the parking spaces required by this section for a religious institution, an auditorium incidental to a school, or a similar use, may be supplied by the off-street parking facilities provided by uses primarily of a “day-time” or complimentary nature;
 - d. The joint parking facility shall be located within 600 of a main entrance of the use or building served, except for spaces serving a dwelling, which shall be within 200 feet of the main entrance of the dwelling unit served;

- e. The applicant for the joint use parking facility shall show there is no substantial conflict in the principal operating hours of the buildings or uses for which joint use of the off-street parking facilities is proposed;
 - f. A contract providing for shared parking for a period of at least 20 years is executed before approval of a permit and recorded before issuance of a certificate of compliance.
- 7. Exception: Reduction for Bicycle Parking.** Bicycle parking facilities (bike racks) may be substituted for no more than 5% of the total parking spaces required for non-residential land uses.
- 8. Exception: Documented Case Studies.** Case studies or other evidence from similar land uses and locations may be used to permit the reduction of the minimum parking space standards in Table IV.2 by up to 15%.
- 9. Passenger Loading Areas.** Day care centers, schools, group care facilities and places for public assembly located on arterial roads shall provide at least one safe, properly signed off-street passenger loading area.
- 10. Freight Loading Areas.** Commercial and industrial buildings and uses shall provide one safe, properly signed off-street freight loading area for each 10,000 square feet of gross floor and/or outdoor storage area. Off-street freight loading areas shall be on the same lot or parcel and under the same ownership as the building or use they serve, be designed to accommodate the largest vehicle that may reasonably be anticipated, and have the following minimum dimensions:
- a. Vertical clearance: 14 feet;
 - b. Width: 12 feet; and
 - c. Depth or length: 35 feet.
- No vehicle parked in an off-street freight loading area shall extend into a public right-of-way.
- 11. Access to Off-Street Parking and Loading Areas.** Properly graded and drained driveways shall be provided for safe access to off-street parking and loading areas, including the off-street parking for single family dwellings.
- a. No parking or loading area shall create a situation in which vehicles are required to back onto a public street. Parking areas for single family dwellings with access to local and collector streets are exempt from this requirement.
 - b. Continuous curb cuts shall be prohibited. All access to public streets shall be via driveways that comply with these performance standards.
 - c. Driveways accessing an arterial shall be at least 200 feet from any other point of access (other driveways or intersections). Driveways to roads intersecting an arterial shall be located at least 150 feet from the arterial or, where that distance cannot be attained, at the property line most distant from the arterial.

- d. Clear vision triangles shall be provided on both sides of driveways. A clear vision triangle is defined by extending a line between two points: Point 1 shall be 15 feet from the outer edge of the driveway on the lot line paralleling the street the driveway enters; and Point 2 shall be 15 feet back from the lot line along the outer edge of the driveway. For driveways accessing arterials, the distances shall be increased to 30 feet. Driveways expected to carry 300 or more ADT shall be treated as intersections.
- e. No parking, and no solid fence or wall, planter, hedge, shrub, or other visual obstruction more than 3 feet in height above grade shall be permitted in a clear vision triangle. Trees may be permitted in clear vision triangles, but only where all branches are pruned to a height of at least eight feet above grade.
- f. Driveways for single-family dwellings shall be a minimum of 12 feet wide, with a minimum curb radius of five feet, and a maximum grade of 5% for at least 20 feet before the driveway intersects the alley or street (on collectors and arterials). Driveways for other uses shall be designed to accommodate the anticipated level of traffic.
- g. Where required for drainage, driveways shall be constructed over a minimum 12 inch culvert capable of supporting a load of 40,000 pounds.

12. Circulation in Off-Street Parking Areas. The pattern of circulation within parking areas shall be designed to provide safe and efficient access to individual parking spaces, protect pedestrians moving through the parking area, and facilitate safe access to public streets.

- a. Minimum aisle widths shall be:
 - i. 90° parking: 24 feet for two-way circulation;
 - ii. 60° angle parking: 18 feet for one-way circulation; 21 feet for two-way circulation;
 - iii. 45° angle parking: 15 feet for one-way circulation; 21 feet for two-way circulation; and
 - iv. 30° angle parking: 13 feet for one-way circulation; 21 feet for two-way circulation.
- b. Where one-way circulation is used, directional signs shall be installed at all access points to the parking area.
- c. No parking area shall be designed so that circulation from one portion of the area to another relies on a public street.
- d. There shall be safe pedestrian access from building entrances to parking areas which may include striping or different colored or textured surfaces.

13. Master Planning. All developments proposing more than one use or building shall demonstrate that their site plan minimizes the number of points of access to public streets.

Table IV. 2 Minimum Off Street Parking Space Standards

Residential	Parking Spaces	Lodging	Parking Spaces
Single family dwelling and duplex	2 per DU ³	Bed & breakfast	1 per rentable unit + 2
Multi-family dwelling	1.5 per DU	Hotel / motel	1 per room + 1 per 4 employees per shift + 50% of the requirement for other services – restaurant, retail, etc.
Accessory dwelling units	1 per accessory DU + 2 per primary DU	Hostel	1 per 8 beds + 1 per 4 employees per shift
Community residential facility	1 per staff person per shift, + 1 per 4 residents, + 1 per vehicle operated by the home or facility	Eating and Drinking Establishments	Parking Spaces
Public/Civic	Parking Spaces	Food & beverage establishments	1 per 100 sf of floor area, min. 6 spaces
Fraternal organizations	1 per 240 sf ⁴ of floor area ⁵ + 1 per 4 employees	Restaurant with drive-through	1 per 75 sf of floor area, min. 6 spaces; stacking spaces may contribute toward parking space requirement
Library/cultural exhibit	1 per 500 sf of floor area	Office	Parking Spaces
Religious / community centers / theatres / places of assembly	1 per 3 seats	Administrative / professional / general	3 per 1,000 sf of floor area
Elementary and junior high schools	1 per classroom + 1 per employee + 1 per 5 students	Financial services, banks	3 per 1,000 sf of floor area
High schools	1 per classroom + 1 per employee + 1 per 4 students	Sports and Recreation, Participant	Parking Spaces
Schools, specialized or studios (dance, martial arts, etc.)	3 per 1,000 sf of floor area	Bowling alley	3 per lane
Hospital, medical offices and clinics	1 per 250 sf of floor area	Fitness, recreational sports, gym	3 per 1,000 sf of floor area
Industrial	Parking Spaces	Go cart, driving range, shooting range, and similar use requiring large, uninhabited areas	1 per each activity (each go cart, tee area, firing position, etc.)
Utilities	1 per employee per shift + 2 spaces	Golf course	4 per hole
Manufacturing, production and industrial	1 per employee per shift + 3 spaces	Skating rink	1 per 360 sf + 1 per 2 employees per shift
Auto wrecking yard	11 for sites up to 10 acres	Swimming Pool	1 per 4 of total occupancy

³ DU means dwelling unit.

⁴ Sf means square feet.

⁵ Floor area means leasable area of a structure, which may include outdoor seating.

	+ 1 for each additional acre		load + 1 per 8 feet of grandstand or bleacher seating
Recycling center	1 per employee per shift	Camps, camping and related establishments	1 per site + 1 per 5 sites
Day care center (group 12+)	1 per staff person per shift + 2 for pickup / drop off + 1 per 10 children	Commercial	Parking Spaces
Commercial	Parking Spaces	Construction supplies, sales and service	1 per 1,000 sf of floor area
Animal services – sales, grooming or veterinary	1 per 480 sf of floor area	Convenience store	4 per 1,000 sf of floor area
Animal services – shelter or boarding	1 per 1,000 sf of floor area	Gasoline sales	1 per 400 sf of floor area + 1 per two pumps
Business equipment sales or service	1 per 480 sf of floor area	Artist work or sales space	1 per 480 sf of floor area
Day labor or employment agency	5 per 480 sf of floor area	Communication services establishments	1 per 480 sf of floor area
Laundry	1 per 500 sf of floor area	Beauty & barber shops	6 per 1,000 sf of floor area
Small item retail	3 per 1,000 sf of floor area	Other personal services	3 per 1,000 sf of floor area
Large item retail such as furniture, appliances and greenhouses	1 per 1,000 sf of floor area	General merchandise, grocery stores	4 per 1,000 sf of floor area
Business support services	1 per 480 sf of floor area	Day labor and employment agency	1 per 480 sf of floor area + 1
Vehicle sales and service	1 per employee per shift + 2 per service stall + 1 for each 20 outdoor vehicle display spaces (does not include inventory)	Food and beverage retail sales	4 per 1,000 sf of floor area
Car wash and cleaning services	1 per cleaning area (bay, vacuum, etc.) + stacking 3 per bay	Equipment sales and rentals	1 per 2 employees per shift + 2 per service stall
Motor vehicle repair	1 per employee per shift + 2 per service bay	Vehicle storage and towing	2 per employee per shift + 5 spaces

P. Pedestrian Access. Except as provided in the RVZD and XRZD (4. a. Special standard), developments shall provide sidewalks along all street frontages and/or an effective system of off-street pedestrian circulation that will allow pedestrians to safely travel from any part of the development to the boundaries of the development. Sidewalks and pedestrian (not intended for bicycles) trails shall be a minimum of 5 feet in width. Wider walks or pedestrian trails may be required in active areas, including the CBZD and TZD, or where trails will be shared with bicycles, in which case the minimum width shall be 9 feet. Please see the *City of Polson Standards for Design and Construction* for specifications.

Q. Bicycle Access.

1. Bicycle routes are required when determined necessary by the CC to provide safe access to schools, playgrounds, shopping, adjoining neighborhoods, transportation and other community facilities or for the continuation of existing or planned routes as described in the applicable Trails Master Plan.

2. Bicycle routes may be located along internal subdivision roads and may require an additional 8-foot, striped bike lane to separate the path from traffic when deemed necessary by the CC to provide for safe coexistence of automobile and bicycle traffic.
3. When adjacent to a trail system, the developer shall continue that trail system across the subject property. All separated bicycle trails shall be built in conformance with the *City of Polson Standards for Design and Construction*.

R. Circulation. All circulation systems, vehicular, pedestrian, and bicycle, shall be designed and constructed to connect with both existing and anticipated future development.

S. Parks and Open Space. These parkland dedication requirements apply to all major or subsequent minor residential subdivisions, recreational vehicle subdivisions, mobile home subdivisions, and to condominiums, townhouses and other multiple-family housing developments.

1. As required by 76-3-621, MCA, the developer shall dedicate to the governing body land, or provide a cash donation in lieu of land, for parks.
 - a. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
 - b. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre; and
 - c. 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
 - d. 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.
2. A parkland dedication may not be required for:
 - a. Land proposed for subdivision into parcels larger than 5 acres;
 - b. Subdivision parcels that are all nonresidential;
 - c. A subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes or condominiums;
 - d. A subdivision in which only one additional parcel is created; and
 - e. Cluster development.
3. The subdivider is encouraged to meet with the Polson Parks Director prior to submitting a subdivision application. When reviewing a parkland proposal, the following will be considered:
 - a. Size. The park must be large enough to be useful and aesthetically pleasing;

- b. Topography. The park must be suitable for active or passive recreation, but may include limited areas of steep slopes, wetlands and other areas that will not be developed;
 - c. Location. The park must be within 1/4 mile of the majority of the lots served and be safely accessible by pedestrians coming from the lots served. Where possible, the park should include and be connected to existing or planned pedestrian and bicycle trails in accordance with the applicable Trails Master Plan and construction requirements;
 - d. The recreational needs of the subdivision residents;
 - e. Cost-effective maintenance;
 - f. Overall value to the public, and
 - g. The goal of providing recreational opportunities to all segments of the population.
4. The governing body, in consultation with the subdivider and the planning board or park board, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside of the boundaries of the subdivision.
 5. Where the small size of the parcel to be dedicated, topography, location, or other circumstances (see 6. below) make dedication infeasible, the CC may accept a cash donation. Cash donations shall be for the fair market value of the undivided, unimproved land. Cash donations shall be paid into a separate fund and used only for the acquisition of parkland, or the development, or maintenance of parks. The governing body may not use more than 50% of the dedicated money for maintenance.
 6. As per 76-3-621(6), MCA, the governing body shall waive the park dedication requirement if it determines that:
 - a.
 - i. The preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and,
 - ii. The area of land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under 1, above;
 - b.
 - i. The preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and
 - ii. The area of the land proposed to be subdivided, by virtue of providing long-term protection, is reduced by an amount equal to or exceeding the area of the dedication required under 1., above;

- c. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections 6.a. and 6.b., is reduced by an amount equal to or exceeding the area of the dedication required under 1., above; or
 - d. i. The subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and
 - ii. The area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under 1., above.
7. The governing body may waive the park dedication requirement if:
- a. The subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical or natural resources, agricultural interests, or aesthetic values; and
 - b. The area of the land to be subject to long-term protection, equals or exceeds the area of the dedication required under 1., above.
8. In subdivisions developed pursuant to a development agreement (see Chapter V), the parks dedication for the entire subdivision shall accompany the first final plat filed.
- T. Large Scale Development.** A large scale development includes 100 or more residential lots or units, or commercial or industrial or a combination of uses that will potentially generate 1000 or more vehicle trips on the average working day (ADT) based on research published by the Institute of Transportation Engineers or a similar source.
- 1. Large-scale developments shall provide, or contribute to the provision of, additional public facilities necessitated, entirely or in part, by their development. Such facilities shall be provided in compliance with all requirements of these regulations and may include, but are not limited to: water system capacity, including larger mains, wells and reservoirs; sewerage system capacity, including larger mains, lift stations, and treatment facilities; runoff management measures, including stormwater control facilities and conveyance systems, street improvements, including deceleration, acceleration, or turn lanes, traffic signals, and bridges; pedestrian and bicycle facilities; solid waste transfer stations; and emergency services buildings and apparatus.
 - 2. The public facilities needs of a large-scale development shall be determined through a fact-finding process conducted by the board, at the expense of the developer, resulting in a community impact report. The community impact report process shall be conducted as follows:
 - a. The administrator shall determine whether a proposed development is a large-scale development at the pre-application review;
 - b. Where a community impact report is required, the administrator shall inform the developer of the need for a community impact report, including the scope of work to be addressed. The scope of work may be modified by written agreement between the administrator and the developer. The work shall be performed by a qualified party, chosen by the developer. The administrator

may disapprove of the developer's choice and in such instances the developer shall choose another party to carry out the work.

U. RESERVED.

Division 3 – Ensuring Land Use Compatibility – Enhancing the Community's Image

V. Potential Nuisances. Failure to comply with these performance standards on a continuing basis is a violation of these regulations.

1. **Noise.** No development shall create excessive levels of sound beyond its property line. Excessive sound, measured at the appropriate minimum setback line of the receiving use, exceeds the standards of Table IV.3.
 - a. This performance standard applies to sounds generated by occupancy of a development, including sounds generated by operation of motor vehicles and heavy equipment on the site. It does not apply to motor vehicles on public streets, or the operation of farm machinery, watercraft, or aircraft.
 - b. The maximum sound levels of Table IV.3 may be exceeded by temporary construction and maintenance activities and holiday celebrations, but in the LRZD, MRZD, OTZD, HMZD, XRZD, RVZD and TZD, excessive noise generated by such activities shall be restricted to the hours between 7:00 A.M. and 10:00 P.M.

Table IV.3 Detailed Performance Standards for Noise

District In Which The Sound Is Received	Maximum Sound Level
LRZD, MRZD, OTZD, HMZD, XRZD, TZD	60 dBA, 7:00 A.M. to 10:00 P.M.
	50 dBA, 10:00 P.M. to 7:00 A.M.
RZD, HCZD, CIZD	70 dBA, any time

"dBA" is the measure of sound levels in A-weighted decibels.

2. Light, Glare, Heat.

- a. No development shall direct excessive or dangerous light, glare, or heat beyond its property line, or create lights or glare that constitutes a traffic hazard.
- b. Welding equipment and similar sources of intense light or heat shall be shielded from neighboring properties and public ways by enclosure in a building, location on the property, or a fence or wall.
- c. **Outdoor Lighting.**

- i. All new and replacement nighttime outdoor lighting must direct its light downward and be side-shielded to prevent glare beyond the boundary of the subject property.
 - ii. No commercial or industrial development shall generate a level of illumination greater than 0.5 foot-candle in any neighboring residential zoning district.
 - iii. Nonessential Exterior Lighting: All nonessential exterior commercial and residential lighting is encouraged to be turned off after business hours and/or when not in use. Lights on a timer are encouraged. Sensor activated lights are encouraged to replace existing lighting that is desired for security purposes.
 - iv. Canopy Lights: Canopy lights, such as service station lighting shall be fully recessed or fully shielded so as to ensure that no light source is visible from or causes glare on public rights of way or adjacent properties. Any canopy structure used at a business location must have recessed lights with diffusers which do not extend below the surface of the canopy.
 - v. Roof Illumination: Roof illumination, such as lights shining upward toward roofs or on rooftops, is not allowed.
 - vi. Exempt lighting: The following lighting is exempt from these standards:
 - a. Lighting for Public Playing Fields: Luminaires used for publicly-owned playing fields provided the lighting is used only while the field is in use.
 - b. Emergency Lighting: Vehicular lights and all temporary emergency lighting needed by the fire and police departments, or other emergency services.
 - c. Tower Lighting: Lighting of radio, communication and navigation towers provided the owner or occupant demonstrates that the Federal Aviation Administration (FAA) regulations can only be met through the use of lighting that does not comply with this section.
- 3. Electrical Interference.** No development shall create electrical interference on other properties.
- 4. Solid Waste.** Solid waste shall be stored in approved containers, and handled in a manner that does not:
- a. attract bears, rodents, flies or other animals;
 - b. generate odors perceptible beyond the property line or liquid runoff; or
 - c. permit the blowing of paper or other lightweight waste.

5. **Commercial and Industrial Waste.** All commercial and industrial solid waste handling and storage areas shall be screened from public view by enclosure in a building, location on the property, a fence or wall, or a densely planted landscaped buffer.
6. **Outdoor Storage.** Outdoor storage of commercial and industrial solid waste is covered in 5., above. Other outdoor storage shall be permitted as established in each zoning district, but shall not, regardless of its location on the property, or screening or buffering, create a fire, health, or safety hazard, or constitute an attractive nuisance.
7. **Surface Runoff.** No development shall channel surface or irrigation water onto another property without the express permission of its owner. See also the *City of Polson Standards for Design and Construction*.
8. **Irrigation.** No development shall adversely impact the operation of an existing irrigation system.
9. **Dust, Smoke, Odors.** No development shall generate dust, smoke, odors, or other air-borne pollutants that have an adverse impact on neighboring properties or the enjoyment of public spaces. See also IV.F, Air Quality, above.

W. Landscape. Installation of landscape is among the most effective techniques for ensuring land use compatibility and enhancing the community's image. Landscapes shall be designed as follows.

1. **Purpose.** The purpose of these landscape standards is:
 - a. To mitigate potential land use conflicts;
 - b. To enhance the visual appeal of the city and surrounding area;
 - c. To conserve energy by providing windbreaks, shade and temperature moderation;
 - d. To encourage a pleasant and safe environment for pedestrians by placement of trees and other interesting visual features; and
 - e. To encourage the conservation of water by rewarding the use of low water demand landscaping.
2. **Scope.**
 - a. This Section, IV.W., shall apply to all development as required in these regulations.
 - b. Some zoning districts and performance standards, for example IV.C., Shoreline Buffers, may have specific landscape standards that supersede this section. Some land uses have specific landscape requirements that supplement and are in addition to this section.
3. **Landscape Plan.** When required, landscape plans shall include the following information:
 - a. Format. The landscape plan submittal shall include site plans meeting the following standards:
 - i. Suggested scale of one inch equals 20 feet but not less than one inch equals 100 feet; and

- ii. Standard drawing sheet of a size not to exceed 24 x 36 inches. A plan which cannot be drawn entirely on a 24 x 36-inch sheet must be drawn on two or more sheets, with match lines.
- b. Contents. A landscape plan required pursuant to this section shall contain the following information:
 - i. Date, scale, north arrow, and the names, addresses, and telephone numbers of both the property owner and the person preparing the plan;
 - ii. Project name, street address, and legal description;
 - iii. Location of existing boundary lines and dimensions of the lot;
 - iv. Location of building footprints;
 - v. Required zoning setbacks, shoreline buffer, and lakeshore protection zone, as applicable;
 - vi. The location and size of existing and proposed streets and alleys, utility easements, utility lines, driveways and sidewalks on the lot and/or adjacent to the lot;
 - vii. Location and dimension of all proposed landscaping, including the location, maturity, height, width and material of proposed screening and fencing (with berms to be delineated by one foot contours);
 - viii. Landscape legend providing a description of plant materials shown on the plan, including typical symbols, names, locations, quantities, container or caliper sizes at installation, heights, spread and spacing. The location and type of all existing trees on the lot over six inches in caliper must be specifically indicated;
 - ix. Illustration of landscaping and screening to be provided in or near off-street parking and loading areas, including information as to the amount (in square feet) of landscape area to be provided internal to parking areas and the number and location of required off-street parking and loading spaces;
 - x. An indication of how existing healthy trees and shrubs (if any) are to be retained and protected from damage during construction;
 - xi. Size, height, location and material of proposed seating, lighting, planters, sculptures, and water features, if any;
 - xii. A description of proposed watering methods;
 - xiii. Areas to be irrigated and location of irrigation infrastructure
 - xiv. Location of clear vision triangles on the lot (if applicable);
 - xv. Tabulation of "points" earned by the plan (see tables in Section W.7., below);
 - xvi. Designated snow removal and storage areas;
 - xvii. Location of pavement, curbs, sidewalks and gutters;

- xviii. Location of existing and/or proposed drainages and drainage facilities;
- xix. Existing and proposed grades;
- xx. Size of plantings at the time of installation and at maturity;
- xxi. Planting plan for lakeshore protection zone and shoreline buffers, if not previously provided, such as through subdivision review or lakeshore development permitting; and
- xxii. Front, rear and side elevation views of buildings, fences and walls with height dimensions if not otherwise provided by the application. Plans shall show open stairways and other projections from exterior building walls.

4. Landscape Plan Review.

- a. The administrator shall review each landscape plan to determine whether it complies with the requirements of this section. When a landscape plan is required, a permit will not be issued for development without an approved landscape plan. Appeal of the administrator's decision may be made to the BOA following the process for zoning appeals in III.P.
- b. Approved landscaping shall be installed prior to permit expiration.

5. Requirements for Parking Lot Landscaping.

- a. The following standards are minimum mandatory standards. The provisions of Table IV.4 require additional vegetation or other landscape features for receipt of performance standard points.
- b. Parking lot definition: For the purposes of this section, a parking lot is any area that provides four or more motor vehicle parking spaces for the visiting public, customers, or more than two occupancies. For purposes of determining parking lot landscaping requirements, the term "parking lot" includes driving aisles necessary to access required parking spaces, but not fire lanes or the principal vehicular access to the building, unless that access is necessary to access the required parking spaces.
- c. All parking lots shall be landscaped in accordance with these landscaping requirements in addition to the minimum yard landscaping requirements for the site.
- d. Parking lot screening or buffering is required as follows:
 - i. All parking lots located on a lot with an adjacent residential use or zoning designation must be screened from that residential adjacency with dense vegetation such as a hedge, tree row, wood fence, chain link fence with slats or other screening fence, an earth or masonry wall, or earth berm. The screening shall be at least four feet in height.
 - ii. All parking lots located between the principal structure and public streets must be buffered from the public streets. Appropriate buffering methods include trees, shrubs, hedges, planting beds, grasses, berms, fences, walls and other landscape materials. A buffer consists of a minimum of 4 major trees and 20 shrubs planted and maintained per 100 lineal feet of street frontage. Other landscape materials and features may be applied instead of some or all of the shrubs as approved by the administrator.

- iii. The screening and buffering methods shall comply with clear vision triangle standards, which limit visual obstructions in the clear vision triangles to no more than 3 feet in height above grade. See also II.M.4.b.v, which requires for residential to commercial conversions in the TZD that the front yard shall be left unfenced, or if one is existing, in conformance with neighboring properties, with a low, open fence (like a picket fence) or hedge.
- e. All parking lots with more than 4 spaces required or installed, whichever is greater, shall include a minimum of two major trees and six shrubs within 20 feet of the parking lot.
- f. For each 8 parking spaces required or installed, whichever is greater, the following numbers of major trees, ornamental trees, evergreen trees and shrubs must be provided within 20 feet of the parking lot:
 - i. One major tree; or
 - ii. One evergreen tree and one ornamental tree; or
 - iii. Three ornamental trees, and
 - iv. Six shrubs.
- g. No parking space shall be located farther than 70 feet from the trunk of a major tree.
- h. All parking lots providing 16 or more parking spaces shall have a minimum of 20 square feet of landscape area within the parking lot for each off-street parking space in the lot. The interior parking lot landscaping shall be designed to facilitate, control and denote proper vehicular circulation patterns. Internal parking lot landscaping provided shall be proportionately dispersed so as to define aisles and limit unbroken rows of parking to a maximum of 100 feet.
- i. No tree may be planted closer than four feet to the paved portion of the parking lot.
- j. No required parking space shall be located more than 70 feet from the trunk of a major tree.

6. Requirements for Screening of Off-Street Loading Areas.

- a. The following standards are minimum mandatory standards. The provisions of Table IV.4. require additional vegetation or other landscape features for receipt of performance standard points.
- b. All off-street loading spaces on a lot with an adjacent residential use or zoning designation must be screened from that residential adjacency.
- c. Acceptable screening methods for off-street loading areas include a dense hedge, a wood fence, chain link fence with slats or other screening fence, an earth or masonry wall, or earth berm at least six feet in height and, when applicable, on the interior side of a landscaped area (so the landscaping faces the street).
- d. All screening methods shall comply with clear vision triangle standards, which limit visual obstructions in the clear vision triangles to no more than 3 feet in height above grade. See also II.M.4.b.v, which requires for residential to commercial conversions in the TZD that the front yard

shall be left unfenced, or if one is existing, or in conformance with neighboring properties, with a low, open fence (like a picket fence) or hedge.

7. Points System – Tables IV.4 through IV.7.

- a. All landscape plans must earn a minimum number of points as specified in Table IV.4. Points are awarded for specified landscape features and elements based upon their relative point value. Tables IV.5 through IV.7 below identify methods for landscape plans to earn points toward those required by Table IV.4.
- b. The minimum number of points required for landscape plan approval by zoning district is as follows:

Table IV.4. Minimum Number of Required Points by Zoning District

Minimum Required Points		
Point value of 10	Point value of 15	Point value of 20
LRZD*	MRZD and OTZD*	HCZD
	RVZD*	HMZD*
	XRZD*	RZD*
	TZD*	CBZD*
	CIZD not abutting a residential district	CIZD abutting a residential district

- c. * Only Special Permit Uses are required to meet the landscape requirements of this subsection 7., except as follows:
 - i. In the MRZD and OTZD, all multi-family dwellings shall meet these requirements;
 - ii. In the HMZD, all multi-family dwellings and all medical offices, medical support services and hospital complexes shall meet these requirements;
 - iii. In the XRZD and RZD, all multi-family dwellings shall meet these requirements but community gardens are not required to meet these requirements.
 - iv. In the RVZD, general service campgrounds and recreational vehicle developments shall meet these requirements.
 - v. In the TZD, all multi-family dwellings, home occupations and bed and breakfasts shall meet these requirements.
 - vi. In the HCZD, all highway oriented commercial development shall meet these requirements.

Table IV.5. Vegetation Points

Vegetation Points		
1 Point	3 Total Points	5 Total Points
Each mature tree existing on-site over 6" in caliper; caliper shall be measured at 1' above grade	50% or greater of the landscaped surface area planted with drought tolerant ⁶ species of perennials or grasses	Drought tolerant species for 75% or greater of the number of trees and shrubs
Each major tree Each evergreen tree	3 ornamental trees with 6 assorted shrubs	3 ornamental trees with 1 evergreen tree, 6 assorted shrubs and 6 assorted perennials
3 ornamental trees	2 evergreen trees with 6 assorted shrubs	2 major trees planted 25' on center along a public street
For each 500 square feet of landscaped roof; 75 percent coverage with live vegetation at maturity	Foundation plantings obscuring not less than 50% of the building perimeter at maturity; does not include entry	Foundation plantings obscuring not less than 70% at maturity of the building perimeter visible to the public; does not include entry
80% lawn and 20% planting bed space	70% lawn and 30% planting bed space	60% lawn and 40% planting bed space

Table IV.6. Irrigation Points

Irrigation Points*	
5 Total Points	5 Total Points
Drip irrigation system on an automated timer designed to efficiently irrigate the vegetation.	Underground lawn irrigation system on an automated timer designed to efficiently irrigate the vegetation.

*The use of hose bibs (threaded faucets) on the exterior of existing or proposed structures is not an acceptable method of landscape irrigation for earning points. Irrigation systems and landscaped

⁶ Drought tolerant species are indicated on the Approved Planting Materials for the City of Polson that can be found in the Administrative Materials.

areas should be designed, constructed, operated and maintained so as to promote water conservation and prevent water overflow or seepage into the street, sidewalk or parking areas.

Table IV.7 Non-Vegetative Special Features Points

Non-Vegetative Special Features	
1 Point (Maximum of 5 Points)	
1.	Each stone boulder not smaller than 3' in diameter which is integrated with other landscaping
2.	Each 9 cubic feet of original, freestanding, permanent sculpture which is integrated with other landscaping
3.	Each 1% increment of lot area covered by publicly accessible special pedestrian facilities and features such as plazas, courtyards, covered walkways, fountains, lakes, streams and ponds, seating areas, and outdoor recreation facilities
5 Total Points	
Commercial building is located on the site so that 50% or more of the street facade of the building is within a distance of 3 feet or less from the required front building line, i.e., front yard setback line.	
8 Total Points	
Site is graded and/or terraced utilizing natural stone or prefabricated decorative masonry retaining wall material as a drystack or mortared wall. In order to qualify for the points available in this section the wall portion must:	
1.	Be 5% of the length of the total perimeter of the lot or parking lot for each 2 points to be awarded;
2.	Have a vertical face surface of at least 1 foot along the length of the area to be considered for this section;
3.	Be integrated with other landscaping materials and grading on the site; and
4.	Be complementary to the overall grading of the site and the activities and architecture contained on the site.

8. Acceptable Landscape Plant Materials.

- a. **Use of Existing Vegetation.** Mature, functional, existing vegetation shall be retained to serve design and buffering functions wherever possible.

- b. **Noxious Vegetation.** Noxious vegetation will not be preserved or tolerated. Please refer to the Lake County Weed Control District for the defined noxious vegetation in Lake County (contact information is below).

9. Plant Material Specifications. Plant materials required by this section are subject to approval by the administrator. Plant materials shall be those identified as hardy in Zones 1 through 4 from the U.S. Department of Agriculture and that are adapted to or suitable for the Polson climate and soils. See Administrative Materials for a list of approved planting material; this document lists species already approved by the administrator, but plant materials are not limited to what is listed in that document – other species may be approved if they comply with this section. Plant materials to be newly installed in landscape designs shall meet the following specifications:

- a. All trees, major, evergreen and ornamental, shall be containerized, bagged-and-burlapped stock, or bare root in good condition, with a caliper of at least 1.5 inches measured one foot above grade for deciduous trees, and a height of at least six feet for coniferous trees; and
- b. All shrubs shall be a minimum one-gallon containerized stock or bare root, in good condition; and
- c. All perennials and ornamental grasses shall be a minimum 4” containerized stock or bare root and, in good condition. All plant materials shall comply with the American Standard for Nursery Stock; and
- d. No artificial plant materials may be used to satisfy the requirements of this standard unless approved by the administrator (e.g., artificial turf for water conservation).
- e. As of the 2016 update of the Polson Development Code, the following agencies and websites are available as resources for information about noxious vegetation and recommended plant types:
 - i. Lake County Weed Control District: www.lakecountyweeddistrict.org or 406.883.7330
 - ii. Montana Weed Control Association, Inc.: www.mtweed.org or 406.684.5590
 - iii. MSU/Lake County Extension Office: www.lakecounty-mt.org/ExtensionOffice or 406.676.4271

10. Protection of Landscape Areas.

- a. Perimeter parking lot treatment (i.e., curbs, large rocks, etc.) shall be installed to protect landscape areas adjacent to parking lots.
- b. Landscaped areas within parking lots (i.e., landscape islands or peninsulas) must be protected from vehicular traffic through the use of continuous concrete curbs or other permanent barriers approved by the Administrator.
- c. Railroad ties, rolled asphalt, pin down wheel stops or similar methods of curbing are not acceptable methods of landscape protection within parking lots.

11. Coordination with Utilities.

In order to prevent damage to both vegetation and above-ground and underground utility lines, all trees and other large vegetation shall be planted no closer than the minimum distance specified in the *City of Polson Standards for Design and Construction*. Contacting the utility locate company is advised before digging or installing any landscaping. The website www.montana811.org is available for the public to understand and use the "Call Before You Dig" or the "One-Call" System which has been set up to prevent damage to people, property and underground facilities. As of the 2016 update of the Polson Development Code, to request a locate of underground facilities in your area, dial 811 or 1-800-424-5555.

12. Maximum Allowable Slope or Grade.

- a. All required landscaped areas shall not exceed a 35% slope at final grade, except as provided below.
- b. The administrator may waive the maximum allowable 35% slope if the site is certified stable by a professional engineer licensed in the State of Montana. Consideration of this waiver will typically only be given with a purpose to protect existing topographical or natural features (i.e., watercourse, hillside, mature vegetation). Alternatives to enable exceeding the maximum allowable slope of 35% may include terracing, retaining walls, architectural appurtenances, landscape features, or a combination thereof that will achieve a greater design quality and enhanced landscape features.
- c. All landscaped areas to be finished in grass that exceed a maximum allowable slope of 35% shall be installed as turf sod or hydro-seed. If hydro-seed is utilized, additional erosion control fabric (i.e., matting or blanket, or equivalent thereof) shall be provided to ensure a stable slope for a minimum of one calendar year while the vegetation becomes established.

13. General maintenance.

- a. Required landscaping must be maintained in a healthy, growing condition at all times. The property owner is responsible for regular weeding, mowing of grass, irrigating, fertilizing, pruning and other maintenance of all plantings as needed. However, the city parks department is responsible for pruning or removing any tree in a city right-of-way or park.
- b. Any required plant that dies must be replaced with another living plant that complies with the approved landscape plan. Failure to maintain required landscaping in a healthy growing condition at all times is a violation that may result in zoning enforcement according to Chapter III Division 6. When enforcing this provision of this performance standard, external factors such as seasonality and availability of landscape stock shall be considered before any action to revoke a permit is taken.
- c. Any damage to utility lines resulting from the negligence of the property owner or the owner's agents or employees in the installation and maintenance of required landscaping in a utility easement is the responsibility of the property owner. If a public utility disturbs a landscaped area in a utility easement, it shall make every reasonable effort to preserve the landscaping materials

and return them to their prior locations after the utility work. If some plant materials die, it is the obligation of the property owner to replace the plant materials.

14. Vegetation Definitions. When used in this section, terms are defined as follows:

Buffer: A landscape area located along the perimeter of a lot or parking lot intended to soften visual and auditory impacts and to separate land uses from one another or from a publicly traveled way.

Dense hedge: Closely growing bushes or shrubs that provide a consistent visual screen.

Evergreen tree: A tree with needles or leaves that remain alive and on the tree through the winter and into the next growing season. Evergreen trees may be ornamental or major trees, depending on expected height at maturity. Evergreen trees are encouraged to be incorporated into landscape designs due to year-round benefits.

Grasses: Non-woody plants in the family Gramineae, as well as grass-like plants belonging to the families Cyperaceae (sedges) and Juncaceae (rushes).

Major tree: A tree with an expected mature height of greater than 25 feet. Major trees may also be referred to as canopy trees.

Mature plant: A plant that has reached its full growth stage.

Maturity: A stage at which a plant is mature.

Perennial: Plants that live or grow for more than one year.

Ornamental: Decorative or for aesthetic design purposes.

Ornamental tree: A decorative tree with an expected mature height of 16 to 25 feet.

Screen: A landscape area located along the perimeter of a lot or parking lot intended to provide privacy, block a view and to separate land uses from one another or from a publicly traveled way.

Shrub: A plant that has persistent woody stems and a relatively low growth habit, and that generally produces several basal shoots instead of a single bole. For purposes of these regulations, shrubs are less than 16 feet in height at maturity.

Tree: A woody plant having one or more perennial stem at least 3 inches diameter at breast height at maturity, a more or less definitely formed crown of foliage, and a height of at least 16 feet at maturity.

X. Recreational Vehicles.

1. In all residential zoning districts the temporary use of a recreational vehicle for landowners' guests shall be permitted for a time period not to exceed 14 days without obtaining a zoning conformance permit. Such temporary recreational vehicles shall be parked on the landowners' property and shall not be hooked up to City water and sewer services.
2. **Permitted Uses, Seasonal Recreational Accommodations:** The number of seasonal recreational vehicles shall not exceed one per lot. The recreational vehicles may not be rented. These structures must meet all specification standards of the zoning district in which the property is located including setback distances, shoreline buffers and other applicable performance standards of these regulations. The recreational vehicle may be stored on the property in compliance with the outdoor storage specification defined for each zoning district while not in use. All RVs shall have sewage disposal facilities that meet local and state sanitation requirements. No RV structures shall be used as permanent (year round) dwellings.
3. No recreational vehicle shall be parked or permitted to stand on any public street, highway, road, alley or other such right-of-way for more than a 24-hour period. If so parked for less than a 24-hour period, it shall be parallel to the edge of the right-of-way, safely out of the flow of moving traffic.

Y. Accessory Dwelling Units.

1. **Purpose.** The purpose of these performance standards is to allow efficient use of the existing housing stock and infrastructure, provide housing options that respond to changing household sizes and needs, provide a means for residents—particularly seniors, single parents and empty-nesters—to remain in their homes and neighborhoods, obtain extra income, security, companionship and assistance, and to provide a broader range of affordable housing options.
2. **Applicability.** The following are considered accessory dwelling units or uses:
 - a. A single dwelling unit occupied by the owner, a manager, or a guard is a customary accessory use on all commercial and industrial properties.
 - b. An accessory apartment (an attached, single, functionally separate dwelling unit) is a customary accessory use in all single family dwellings.
 - c. A detached accessory dwelling unit (a single, fully functional dwelling unit physically separated from the primary dwelling on a lot), including an apartment above a garage, is a customary accessory residential use in the LRZD, MRZD, RZD, and HMZD.
3. **Specification Standards.**
 - a. Only one accessory dwelling is permitted per lot;
 - b. Except for an accessory dwelling unit provided for a manager or guard on a commercial or industrial property, accessory dwelling units are only allowed on lots developed with single family residences.

- c. An accessory dwelling shall not contain more than two bedrooms (rooms used principally for sleeping purposes);
 - d. In the LRZD, MRZD, RZD, TZD, and HMZD, the lot must meet the minimum size requirement of the district;
 - e. The ground floor area of the accessory unit shall not exceed 50% of the ground floor area of the principal dwelling or structure;
 - f. An accessory dwelling shall not exceed two stories or the height of the principal dwelling or structure, whichever is less;
 - g. The accessory dwelling shall have a roof pitch, siding, trim and window proportions similar to that of the principal dwelling or structure;
 - h. The accessory dwelling shall comply with all other standards for principal dwellings or structures such as setbacks, lot coverage and height;
 - i. The accessory dwelling unit shall not require a separate access approach;
 - j. Only one municipal facility hookup for sewer and water shall be allowed per lot;
 - k. At least one off-street parking space must be provided for an accessory dwelling unit; and
 - l. Approval from the Montana Department of Environmental Quality or Lake County Environmental Health Department may be required prior to occupancy.
- 4. Renting an accessory dwelling unit.** Renting of either dwelling may occur so long as the two conditions below are met. (Renting an accessory dwelling unit to a manager or guard on a commercial or industrial property is exempt from these conditions.)
- a. One of the dwellings shall be occupied by the landowner as a permanent residence.
 - b. The landowner shall record a signed affidavit and deed restriction, in a form approved by the city attorney, stating the property owner will reside on the property, either in the principal or accessory dwelling unit. Once recorded, the deed restriction may not be removed or modified without CC approval.
- 5. Violation of terms.** In the event that any of these terms is violated, the owner shall provide for the removal of the accessory dwelling improvements and restore the site to its principal use. Violations of these standards will be prosecuted to the fullest extent of the law.

Z. Home Occupations.

- 1. Purpose.** The purpose of this section is to encourage "cottage industry" while mitigating impacts to neighboring homes. A home occupation may be any commercial or light industrial activity that complies with these performance standards, and the other performance standards of these regulations, as applicable.

2. **Floor Area.** A home occupation may be located within any dwelling or an accessory building, but shall not occupy a floor area larger than one half of the floor area of the dwelling to which it is accessory.
3. **Employees.** Except in the LRZD, MRZD, OTZD, XRZD, TZD and HMZD where 2-4 employees who work primarily on the premises may be allowed with a special use permit, no home occupation shall have more than one full-time equivalent, on-premise employee who is not a member of the resident family.
4. **Parking.** Home occupations shall provide off-street parking in compliance with the requirements of IV.O., above.
5. **Outdoor Storage.** Outdoor storage associated with a home occupation shall be subject to the same performance standard governing other outdoor storage in its zoning district, and the other applicable performance standards of these regulations.
6. **Signs.** Home occupations may display signs as permitted in the sign ordinance.

AA. Bed and Breakfasts

1. **Purpose.** The purpose of this section is to provide options for overnight accommodations and meal services to tourists and visitors while minimizing impacts to the neighborhood in which the accommodations are located.
2. **Applicability.** Bed and breakfasts are considered either a permitted use or a special permit use and may be operated in the LRZD, MRZD, OTZD, XRZD, TZD, RZD, and HMZD.
3. **Performance Standards.**
 - a. The establishment must be operated by the owner of the home, who must live in the structure.
 - b. The bed and breakfast may not provide accommodations for more than 18 guests.
 - c. Food service may be provided for resident guests only.
 - d. Bed and breakfasts may not be leased or offered for use as reception space, party space, meeting space or similar events open to non-resident guests.
 - e. Bed and Breakfasts may display signs as permitted in the sign ordinance.
 - f. If the parcel abuts an alley, access to guest parking must come from the alley.
 - g. Off-street parking shall be provided in compliance with Section IV.O. of these regulations.

BB. Multiple-Family Dwellings

- 1. Applicability.** Multiple-family dwellings are subject to all applicable regulations of the Polson Development Code except as modified or supplemented by these standards. These standards apply to multiple-family dwelling structures, including apartments, condominiums and retirement homes that contain more than two living units. They also apply to townhouse structures, and when a single parcel contains either multiple two-family dwellings or a combination of multi-family dwellings and two-family dwellings. These standards do not apply when one two-family dwelling is to be located on a parcel.
- 2. Pedestrian Access.** Multiple-family dwellings must provide a system of walkways connecting each multi-family dwelling to the following when applicable: adjacent public sidewalks, on-site parking lots or parking structures, other on-site multiple-family dwelling buildings, garages, disposal and recycling containers, mail boxes, recreation areas and storage areas.
- 3. Parking and Vehicle Access.**
 - a. Off-street parking shall be provided in compliance with Section IV.O. of these regulations.
 - b. No more than 30% of the parking area may be located between the principal building and the front street.
 - c. Parking may not be located within any required side setback area.
 - d. Direct access shall be provided onto a collector or arterial street, or otherwise located where traffic shall not be channeled through local residential neighborhoods. However, multiple family dwellings or dwelling unit complexes shall not have direct access onto U.S. Highway 93 or MT Highway 35.
 - e. Access and access routes meeting the requirements of the Polson Fire Department may be required to ensure residents have adequate means of escape in the event of an emergency.
- 4. Design Features.** The developer shall provide at least 3 of the following (at the developer's discretion):
 - a. Modulated building wall planes on the front façade through the use of projections, recesses and offset planes with a minimum depth of 2 feet;
 - b. Balconies or bay windows on the front building façade;
 - c. Varied rooflines;
 - d. Visual diversity on all building facades by varying materials, texture, or color;
 - e. Landscaping adjacent to the building that includes at least 1 tree and 4 shrubs per each 25 linear feet of building façade that faces a public street; and
 - f. Windows or glazed area equal to at least 15% of the combined total of all the building's facades.

CC. Cluster Development

- 1. Purpose.** The purpose of these cluster development standards is to encourage innovative development designs that concentrate building sites on smaller lots in order to reduce capital and maintenance costs while preserving natural areas, agriculture and open spaces.
- 2. Applicability.** This cluster development option is available in the LRZD and RZD.
- 3. Review Procedure.**
 - a. Cluster developments that are subdivisions shall follow the subdivision review procedure in Chapter VI. Cluster developments that are not subdivisions shall follow the appropriate review procedures described in these regulations.
 - b. Cluster development subdivisions are exempt from the parkland dedication requirements of IV.S. and 76-3-621, MCA.
- 4. Development Standards.**
 - a. The maximum size for any clustered parcel is ½ acre.
 - b. The maximum number of dwelling units or developed, non-conservation area lots is the same as that allowed under the applicable zoning district regulations, unless a conservation bonus is granted pursuant to subsection 6., below.
 - c. The maximum number of parcels in a cluster is 20. There may be more than one cluster.
 - d. Setbacks internal to a cluster development may be waived or reduced, but in no case shall any setback for detached dwellings be less than 5 feet.
 - e. Lots are not subject to the minimum lot size, minimum frontage or minimum lot width requirements of the zoning district, but are subject to the lot coverage requirements of the zoning district and Section IV.D., as applicable.
 - f. At least 40% of lots shall abut a conservation or open space area. Direct pedestrian access to the conservation or open area shall be provided to all lots unless and while the area is used for farming or ranching, where resident access is not required but may be provided.
 - g. The clusters shall contain a continuous system of sidewalks and trails.
 - h. There may be up to two homes on a shared private driveway. The shared driveway is limited to 200 feet in length.

5. Conservation Area or Open Space.

- a. The conservation area or open space must conserve and protect significant resources, such as stream buffers, steep slopes, wetlands, fields, seeps, woodlands, prime soils, irrigation facilities and viewsheds. It can be used to conserve agricultural lands and provide recreational opportunities for the subdivision's residents and/or the general public. It can be used to conserve significant historic or cultural resources.
- b. The conservation area or open space may contain a residence and appurtenances if used for agriculture. The conservation area or open space may also be used for wastewater treatment facilities, subsurface utilities, stormwater management, community gardens, trails, parks and other recreational uses and related facilities as allowed in the zoning district. It shall not be heavily infested with noxious weeds at the time of final platting. Roads within the conservation area or open space shall not be counted toward the open space minimum.
- c. The location, size, character and shape of the conservation or open space area(s) shall be appropriate for its intended use. However, at least 10 acres or 50% of the property, whichever is greater, shall be designated and maintained as conservation area or open space.
- d. Open space to be used for active recreation shall be located and designed so that it can be conveniently and safely accessed by intended users.
- e. The designated conservation or open area shall be preserved as a condition of approval of a cluster development subdivision. Land protected as open space on a long-term basis must be identified on the final subdivision plat, and the plat must include a copy of or a recording reference to the irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels, as provided in Title 70, chapter 12, part 2, MCA.
- f. A cluster development preliminary plat application shall include a plan for ownership, use, and management.

6. **Conservation Bonus.** A cluster development qualifies for a bonus in the number of lots or dwelling units if:

- a. The governing body determines the conservation area or open space contains one or a combination of qualities described in subsection 5.a., above;
- b. 60% or more of the parent tract is protected from development as described in subsection 5.e, above; and
- c. The governing body determines the plan for ownership, use, and management of the conservation area or open space will adequately provide for its long term protection and management.
- d. Conservation bonuses shall be as follows:

Table IV.8. Conservation Bonus Table

Percentage of parent tract preserved (outside of building lots and roadways)	60	70	80	90
Percentage increase in the number of building lots	30	40	50	60

Note: When using the conservation bonus table to determine the allowable number of lots or dwelling units, numbers ending with a decimal of .5 and greater shall be rounded up, 049 and less shall be rounded down to the nearest whole number.

- e. The shaded area above highlights the following example. The developer of a 40 acre subdivision in the LRZD would normally be permitted up to 248 residential lots (40 acres ÷ 7,000 square feet per lot = 248 lots); however, streets and other dedications would likely reduce this number. If the developer preserves 80% of the property for conservation or open space, the developer could add 124 more building lots (248 lots x 50% bonus = 124). 372 homes would then be clustered on 8 acres, creating residential lots averaging 937 square feet (not including roadways), with the remaining 32 acres managed for conservation or open space.

DD. Wireless Communication Facilities

1. Purpose. The purpose of these standards is to:

- Accommodate the provision of wireless communication services to residents, businesses and visitors;
- Enhance the ability of service providers to serve the community as quickly, effectively and efficiently as possible by clarifying the permitting process and design requirements;
- Protect residential property values and the visual environment from the adverse impacts of communication facilities through careful design and performance standards; and
- Limit the number of towers needed to serve the Polson area by requiring the co-location of wireless communication devices on existing and new antenna support structures, rooftop-mounted structures, public buildings and utilities.

2. Applicability. All wireless communication facilities located within the Polson city limits except for those on tribal, allotment or trust lands are subject to these standards. Amateur radio and other residential communication devices are exempt from the application of this ordinance/resolution.

3. Location.

- Wireless communication facilities within the Polson city limits are special uses in all zoning districts if the proposal meets the requirements of subsections 4. (General Standards), Section 5. (Co-location Requirements), and Section 8, (Application Information) and the application is approved in accordance with III.L.

- b. The use of existing conforming buildings and other structures for placement is hereby encouraged. Additionally, all wireless communication facilities shall meet the requirements of the FAA and FCC.

4. General Standards

- a. Height: The maximum antenna support structure height is 100 feet.
- b. Design: The tower associated with a wireless communication facility shall be a monopole or similar structure designed so that guy wires are not necessary. Lattice towers are prohibited. Creative designs that seek to hide the structure or minimize the visual impact are encouraged.
- c. Spacing: The minimum distance from the base of an antenna support structure to the closest boundary of a residentially zoned parcel is equal to the height of the structure, including antennae. The spacing requirement does not apply to parcels adjacent to an existing wireless communication facility (i.e., there is no spacing requirement between antenna support structures).
- d. Color: All structures at a wireless communication facility shall be non-reflective and finished with a uniform earth or sky tone color including white, gray and brown. Galvanized steel is considered non-reflective.
- e. Lighting: No tower shall be artificially lit unless to assure safety as required by the FAA or FCC. If lighting is required, red beacons are preferable to flashing strobe lights.
- f. Signage: No advertising is permitted anywhere on the facility. Identification signage that lists contact information and is less than four square feet in size shall not be considered advertising.
- g. Screening: Communication facilities shall not include staffed offices, vehicle or equipment storage or other uses not required to send, receive or relay transmissions unless they are screened from public view.
- h. Fencing: A slatted chain link or solid wood or masonry fence at least six feet in height shall be constructed and maintained around the perimeter of the wireless communication facility. Barbed wire fences are prohibited within the City limits. If the facility is located on top of a building, no fencing is required.
- i. Landscaping: A continuous hedge at least four feet in height when planted shall be planted and maintained around the perimeter of the fencing to provide a visual screen. If the facility is located on top of a building or other structure, no landscaping is required.

5. Co-location Requirements.

- a. New antenna support structures shall be designed to accommodate the applicant's antenna and at least one additional antenna unless technically infeasible.

- b. All new antennae must co-locate on existing or approved antenna support structures or existing structures. If co-location is not feasible, the service provider must demonstrate evidence supporting its claim. Such evidence may consist of the following:
 - i. No existing structures are located within the geographic area required to meet the applicant's technical requirements.
 - ii. Existing structures are not of sufficient height or strength (including the possibility of reinforcement) to support the proposed antenna.
 - iii. The applicant's proposed antenna would electromagnetically interfere with an existing antenna or vice versa.
 - iv. The cost to co-locate substantially exceeds the costs to erect a new facility.
 - v. Property owners or owners of existing facilities are unwilling to accommodate the applicant's needs.
 - vi. The applicant clearly demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

6. Abandonment. If at any time the use of a wireless communication facility is discontinued for 180 days, the facility shall be declared abandoned. Determination of abandonment shall be made by the administrator who shall have the right to request documentation from the facility owner regarding support or antenna usage. Upon abandonment, the facility owner will have 90 days to:

- a. Re-use the facility or transfer it to another service provider who will re-use it; or
- b. Dismantle the facility and return the site to pre-construction condition. If the facility is not removed within 90 days of determination of abandonment, the city may remove the facility at the property owner's expense.

7. Variance. If a service provider is unable to meet the requirements of these regulations, the service provider may petition the board of adjustment for a variance. Such a request must include the fee associated with a variance request, steps to be taken to minimize impacts to surrounding landowners and demonstrate why the applicant cannot comply with the requirements. The variance procedure shall be in accordance with III.Q.

8. Application Information. The applicant shall submit the following information for review (see Administrative Materials for an application):

- a. A site plan showing the location and legal description of the site, adjacent roadways, parking and access, areas of vegetation and landscaping, setbacks from property lines, rights-of-way, easements, covenants and residentially zoned areas, and the location of all improvements within the proposed or existing facility;
- b. A vicinity map showing properties and listing the names and addresses of landowners within 1,000 feet and describing land uses;

- c. Elevation drawings showing all antennae, towers, structures, fencing, lighting, signage, landscaping and other improvements;
- d. A statement describing the reasons for the proposed design, the need for the facility including its role in the larger network, the capacity of the tower and the number and type of antennae it can accommodate. Present and future need must be demonstrated by the applicant;
- e. A letter of intent to allow co-location on the antenna support structure;
- f. A letter of intent to remove the facility at the expense of the facility owner or landowner if it is abandoned. The letter shall include a signed statement by the property owner consenting to the City staff entering the property to remove an abandoned facility;
- g. Proof of ownership of the land upon which a communication facility is proposed to be constructed or a copy of the appropriate lease or rental agreement;
- h. Proof of legal and physical access; and
- i. A statement by a licensed professional engineer that the facility will comply with all FAA and FCC standards for structures and radio emissions and local, state and/or federal building codes.

9. Definitions Unique To These Standards.

- a. **Antenna.** Any structure or device used for the purpose of collecting or transmitting electromagnetic waves, including but not limited to directional antennae such as panels, microwaves dishes, and satellite dishes and omni-directional antennae, such as whip antennae.
- b. **Antenna Support Structure.** Any structure or device designed, constructed, used and/or erected for the purpose of attaching, mounting or otherwise affixing antennae. The term includes but is not limited to buildings, light poles, radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative antenna support structures, and the like. The term includes the structure and any support thereto.
- c. **Antenna Support Structure Height.** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure including any attached antennae. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.
- d. **Co-location.** The use of a wireless communications facility by more than one wireless communications provider.
- e. **FAA.** Federal Aviation Administration.
- f. **FCC.** Federal Communications Commission.
- g. **Wireless Communication Facility.** A facility for the transmission and/or reception of radio frequency, microwave or other signals for communications purposes, typically consisting of an

equipment enclosure, an antenna support structure, foundation and one or more antennae. Amateur radio and land mobile radio are excluded from this definition. An antenna alone is not considered a wireless communication facility.

EE. Sexually Oriented Businesses

1. Sexually oriented businesses may be located only in the HCZD or CIZD.
2. Sexually oriented businesses shall not be located within 1,000 feet of any religious institution, cemetery, school, public park, boundary of any residential district or another sexually oriented business.
3. Sexually oriented businesses must prohibit entrance by persons less than 18 years of age.
4. No material depicting specified sexual activities or specifying anatomical areas shall be visible from the exterior of an adult entertainment center.

FF. Planned Unit Developments

1. **Purpose.** The Planned Unit Developments are intended to:
 - a. Allow flexibility in specification and performance standards in exchange for community benefits and innovative, quality design;
 - b. Encourage a complementary mixture of uses and development in accordance with an approved plan, that protects adjacent properties;
 - c. Encourage the preservation and enhancement of natural amenities, cultural resources and open space;
 - d. Provide for a more efficient arrangement of land uses, buildings, circulation systems, and infrastructure; and,
 - e. Encourage infill development, traditional neighborhood development, affordable housing, low-impact, energy efficient and innovative projects, and a variety of housing types and sizes to accommodate households of all ages, sizes and incomes.
2. **Applicability.** PUDs may be approved in the following zoning districts: LRZD, MRZD, OTZD, RZD, HMZD, TZD, HCZD and CIZD.
3. **Requirements.** No application for a PUD will be accepted or approved unless all of the property included in the application is under unified ownership or a single entity's control. In addition, PUDs must contain the following components:
 - a. A size of at least 10 acres except for infill development, where the minimum size is 2.5 acres;
 - b. Pedestrian and bicycle facilities throughout and connecting to adjacent facilities;

- c. A mixture of land uses and housing types;
- d. Interconnected roads, preferably lots and blocks with alleys;
- e. Architectural design standards to be implemented and enforced by a private party such as a unit owners association;
- f. A coordinated landscape plan;
- g. Significant open spaces such as playground or park areas designed for active and passive users with the scale, type and natural features depending on the projected needs of the future users of the site; and
- h. Community facilities in common ownership and use.
- i. Larger scale projects are also encouraged to include:

A functional neighborhood center that is the focal point of the neighborhood with indoor and outdoor spaces and a mixture of uses, opportunities for civic engagement and public art; and

The majority of dwellings located within 2,000 feet of the neighborhood center.

4. Standards Eligible for Modification. Unless otherwise expressly approved by the governing body, PUDs are subject to all applicable standards of the base zoning district regulations. A waiver of the standards does not require approval of the BOA. The governing body may approve PUDs that deviate from specific standards if it is determined that the resulting development satisfies the approval criteria in 6. below. The specific standards that may be modified include:

- a. Allowed uses. Regardless of the underlying zoning, a PUD may include a complementary mix of use types and a broader range of housing types and affordable housing options. A list of uses to be allowed in a PUD must be approved by the governing body;
- b. Minimum lot size (where applicable), provided that parcels sizes are adequate to safely accommodate all proposed buildings and site features and are warranted to support the public benefit likely to result from the proposed development;
- c. Setbacks, when determined to be warranted to support the public benefit likely to result from the proposed development;
- d. Building height, when determined that such an increase is warranted to support the public benefit likely to result from the proposed development;
- e. Maximum lot coverage, so long as erosion will be controlled and stormwater is determined likely to be contained in a manner that will not negatively impact surface water quality or downstream properties;
- f. Parking and loading, when determined that such modifications are warranted to support the public benefit likely to result from the proposed development; and

- g. Street and non-motorized transportation standards so long as such designs would better meet the purpose of this PUD section while still providing a safe and efficient traffic flow.

- 5. Review Process.** Planned Unit Developments are established through the approval of a PUD master site plan. At the option of the developer, the master site plan may also serve as a preliminary subdivision plat if such intention is declared at the pre-application meeting and if the site plan includes all information required for preliminary plats. If the master site plan contemplates distinct phased preliminary plats, the plat for the first phase shall be reviewed concurrently with the master site plan.

A PUD master site plan becomes final when approved by the governing body after a noticed public hearing and recommendation by the CCPB. A subdivision plat reviewed along with a PUD becomes final when all conditions of preliminary approval have been met. All subdivisions authorized under a PUD must become final within 10 years of PUD master site plan approval.

In addition to the requirements for special permit uses and subdivisions, each PUD application must include the following items:

- a. A master site plan showing the location and area of lots and blocks, buildings, transportation facilities, parks, open space and other amenities, utilities and other pertinent features;
- b. A list of the specific standards that are requested to be modified;
- c. A list of land uses that are proposed in the PUD;
- d. A written description of the community benefits of the proposed development and how it provides greater benefits to the city than would development under conventional zoning district regulations;
- e. Architectural standards; and
- f. A description and draft documents indicating how common areas and facilities will be managed.

- 6. Review Criteria.** In reviewing and making decisions on proposed PUDs and site plans, the CCPB and governing body shall consider and make findings on the following criteria:

- a. Whether the proposed PUD would result in a greater benefit to the city than would development under conventional zoning district regulations. Greater benefit may include implementation of adopted planning policies, natural resource preservation, innovative urban design, low-impact or energy efficient development, affordable, workforce or senior housing, neighborhood or community amenities or an overall level of development quality;
- b. The proposal's consistency with the adopted plans for the area;
- c. Compliance with this section GG.
- d. Special use permit criteria; and
- e. Primary review criteria for subdivisions, when applicable.

CHAPTER V - REQUIRED IMPROVEMENTS

- A. What This Chapter Does.** The provisions of this chapter ensure that required improvements will be installed and maintained. A required improvement is any on or off-site improvement required for compliance with these regulations. Required improvements include, but are not limited to: the vegetative and structural measures needed to implement an approved runoff management plan; utilities; streets, sidewalks and trails; parks and open space; off-street parking and loading areas; improvements required by a community impact report; improvements that mitigate potential nuisances, including screening fences and walls; landscaping, and any other improvement required for compliance with the requirements of these regulations.
- B. Installation at Developer's Expense.** The installation of required easements and improvements shall be at the developer's expense, although the city may choose to participate in the costs of certain improvements.
- C. Standards for Required Improvements.** All required improvements shall be installed in compliance with these regulations, the *City of Polson Standards for Design and Construction* and any design and engineering standards separately adopted by the city or other agencies responsible for providing services to the development.
- D. Construction Timing.** Upon submittal of a permit or subdivision pre-application or application, the developer or any subordinate shall not engage in construction of improvements prior to approval of the application. The administrator, board and CC are not bound to accept or approve any on-site improvements that exist prior to submittal of a permit application. The city shall not be responsible if improvements have to be eradicated, moved or rebuilt due to a developer making improvements prior to and/or not in conformance with these regulations or any condition of approval. See also 76-4-121, MCA, which regulates construction activities within subdivisions.
- E. Time of Installation/Development Agreement.**
1. All required improvements shall be installed before a final plat or site plan is recorded; or
 2. Developers may elect to enter into a development agreement and record a final subdivision plat prior to the completion of a portion of the improvements pursuant to these and any adopted regulations; or
 3. Developers may elect to record final plats or site plans of the development in phases or to offer phases of the development for lease, sale, or occupancy before all required improvements are installed.
- F. Prerequisites to Entering a Development Agreement.**
1. Before entering into a development agreement:
 - a. All necessary state, federal and local permits and approvals, including an approval from the Montana Department of Environmental Quality for water supply, sewage disposal and stormwater plans, shall be submitted to the administrator.

- b. At least 50% of the costs of all improvements covered under the development agreement shall have been expended by the developer. The itemized costs shall be determined by a city accepted competitive bid or a city accepted itemized estimate sealed by a licensed professional engineer;
- c. A complete and sufficient final plat or final site plan application shall have been submitted to the administrator for review.

2. Phasing shall be permitted pursuant to a development agreement that:

- a. Incorporates the preliminary plat or site plan used as a basis for permit approval and a detailed site plan and construction drawings of the initial phase;
- b. Identifies all required improvements in the initial phase/s and establishes their estimated cost;
- c. Sets a schedule for the completion of the required improvements in the initial phase and an anticipated schedule for future phases;
- d. Guarantees completion and 365 days' maintenance of all required improvements in the initial phase/s using one of the methods listed in this chapter, and provides a process for submission of detailed plans and cost estimates, and the guarantee of improvements in future phases;
- e. Provides a process by which the city may, if necessary and at its sole discretion, complete required improvements using the guarantee provided;
- f. Provides a process by which either party may request re-negotiation of the development agreement,
- g. Provides a process by which the development agreement may be transferred, with city approval, to the developer's successors; and
- h. Provides that the development agreement and any vested rights it confers shall be void if the city is required to "call" a guarantee to complete required improvements, or if the anticipated schedule is not met or re-negotiated. The developer may re-negotiate the anticipated schedule without losing vested rights, provided that such negotiations are initiated within 90 days after failure to initiate or complete a phase as scheduled.

G. Effect of Development Agreement. The effect of a development agreement shall be to create vested rights in the preliminary plat or site plan, as it was approved. Such rights expire with the development agreement. Development agreements do not insulate developments from changes in state or federal regulations, or changes in the city's fire and building codes.

H. Guarantees. Completion of the improvements identified in a development agreement shall be guaranteed by one of the following methods:

- 1. The developer may place an amount equal to 150% of the estimated cost of the required improvements in escrow, with that amount and accumulated interest being released only after the city, or a consulting licensed professional engineer, has inspected and certified the required improvements (see 2., below). A development agreement may provide for the phased release of a

portion of the escrowed funds as work proceeds, but at least 25% of the amount in escrow shall be retained until all required improvements are installed, inspected, and accepted or approved (as applicable). If required improvements are not completed as provided in the development agreement, the city shall use as much as necessary of the escrow account to complete those improvements, then return any remaining balance to the developer.

2. The developer may provide an irrevocable or standing letter of credit, a joint certificate of deposit, a joint checking account or another bonding mechanism deemed acceptable to the governing body for an amount equal to 150% of the estimated cost of the required improvements. The letter of credit or other financial guarantee shall be released only after the city has inspected and accepted the required improvements. If any required improvements are not completed as provided in the development agreement, the city shall use as much as necessary of the credit available to complete those improvements, then release any remaining balance to the developer.

I. Inspection and Acceptance of Improvements.

1. Fees for the inspection of required improvements shall be set by resolution of the CC. Inspection fees must be paid before a certificate of compliance is issued.
2. Required improvements shall be inspected by the administrator before acceptance. Acceptance of required improvements shall be by action of the CC, following submission of the developer's written request for acceptance and receipt of the administrator's report that all improvements have been inspected and are in compliance with these regulations.
3. Reproducible as-built drawings of all subdivision improvements shall be provided to the city, at the developer's expense, before a certificate of compliance is issued.

J. Warranty of Improvements. Required improvements shall be warranted by the developer for both materials and workmanship for one year following their acceptance. Such a warranty provision shall be included in all development agreements. Where all required improvements will be completed before a final plat is approved and the development is offered for lease, sale, or occupancy, a separate warranty agreement shall be submitted for approval. Enforcement of the warranty shall be assured by:

1. Retention of 10% of an escrow account; or
2. A continuing letter of credit or other financial guarantee acceptable to the city for 10% of the cost of the required improvements; or
3. Opening a new escrow account or providing a new letter of credit in an amount equal to 10% of the cost of all required improvements.

These warranty funds shall be released upon expiration of the warranty period or, if necessary, used to remedy defects that have not been remedied by the developer.

K. Continuing Maintenance Required. The continuing maintenance of any improvement required for compliance with these regulations shall be required, and failure to maintain a required improvement shall be a violation, subject to the penalties provided by VI.D. or III.DD, as applicable.

1. Any development subject to the continuing maintenance requirement established here that results, or may reasonably be expected to result, in multiple ownerships shall create a community association to ensure continuing maintenance. The developer shall submit the proposed declaration of covenants, articles of incorporation, and by-laws for that association with the application for a permit. These documents shall be reviewed and approved by the city attorney, and shall have been recorded before a certificate of compliance is issued.
2. Maintenance of landscaped areas required by this ordinance includes installation and maintenance of an irrigation system and timely irrigation, where necessary; weed and pest control; and all other activities required to maintain the function of the landscaped area.

CHAPTER VI – SUBDIVISION REGULATIONS

- A. What This Chapter Does.** This chapter establishes the rules, procedures and requirements for the subdivision of land within the City of Polson jurisdictional area in compliance with 76-3-201 through 76-3-625, MCA.

Division 1 – General Provisions

- B. Construction Timing.** Upon submittal of a pre-application for subdivision, the subdivider shall not engage in construction of subdivision related improvements prior to approval of the preliminary plat application. The administrator, board and CC are not bound to accept or approve any on-site improvements that exist prior to a submittal of a subdivision application and preliminary plat for review. The City of Polson shall not be responsible if improvements have to be eradicated, moved or rebuilt due to a subdivider making property improvements prior to and/or not in accordance with conditions of preliminary approval. In addition, section 76-4-121, MCA of the Sanitation in Subdivisions Act regulates construction activities within subdivisions.
- C. Transfers of Title.** After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met (76-3-303, MCA):
1. Under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
 2. Under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the Lake County Clerk and Recorder;
 3. The contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the Lake County Clerk and Recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract;
 4. The contracts contain the following language conspicuously set out: “The real property that is the subject of this contract has not been finally platted, and until a final plat identifying the property has been filed with the Lake County Clerk and Recorder, title to the property cannot be transferred in any manner;” and
 5. The Lake County Treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent.
- D. Enforcement.** Except as provided in 76-3-303, MCA and these regulations, every final subdivision plat must be filed for record with the Lake County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the City Attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the Montana

Subdivision and Platting Act (MSPA) and these regulations. The cost of this action shall be imposed against the party not prevailing.

- E. Violation and Penalties.** Any person, firm, corporation, or other entity who violates any of the provisions of the MSPA or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these regulations shall be deemed a separate and distinct offense as per 76-3-105, MCA.
- F. Amendment of Subdivision Regulations.** Before these regulations are amended, each governing body shall at a minimum hold a public hearing on the proposed amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation in the county not less than 15 calendar days or more than 30 calendar days before the date of the hearing.

Division 2 – General Procedures

G. Pre-application Process.

1. Prior to submittal of a subdivision application, the subdivider shall submit a complete pre-application form (see Administrative Materials), appropriate fee and the information listed on the form to the Polson Building & Planning Department. Within 30 calendar days of receiving the complete pre-application form, fee and supporting information, the subdivision administrator, acting as the authorized agent of the governing body to review subdivisions, and the subdivider and/or his or her agent(s) shall meet either in person or by telephone to discuss the proposed subdivision.
2. At the pre-application meeting, the subdivision administrator shall:
 - a. Identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision and review process including, but not limited to, zoning regulations, performance standards and floodplain regulations.
 - b. Provide the subdivider with a list of public utilities, those local, state and federal agencies, and any other entities, such as a homeowners association, that may have an interest in the subdivision that the subdivider will be required to contact prior to submitting a subdivision application and that the subdivision administrator may also contact. If, during the course of the subdivision review, the subdivision administrator contacts a public utility, agency or other entity that was not included on the list originally made available to the subdivider, the subdivision administrator shall notify the subdivider of the contact and timeframe for response.
 - c. Provide the subdivider with a list of information that must be submitted for a preliminary plat application to be deemed complete and sufficient for review. This does not limit the ability of the subdivision administrator to request additional information at a later time that will enable the subdivision administrator to determine whether the application is sufficient for review or to answer questions that emerge during the review process.

3. Unless the subdivider submits a subdivision application and preliminary plat within one year of the pre-application meeting, the subdivider must re-submit a complete pre-application form, appropriate fee and the information as required in this section prior to submitting the subdivision application. The subdivision administrator has the discretion to extend this time period for one additional year if she/she determines the information contained in the pre-application response would be the same based on site and area specific conditions and the regulations in effect at the time of the request.

H. Required Public Agency, Service Provider and Utility Contacts.

1. Prior to submitting a subdivision application and preliminary plat, the subdivider or her/his agents shall contact by mail each of the utilities, agencies and other entities cited at the pre-application meeting and/or in the pre-application response letter, and request that they provide a review of the proposal. The subdivider shall supply each of the listed entities with a copy of the preliminary plat and a vicinity map with the size, scale and clarity sufficient for the entity representative to clearly understand the location and nature of the proposal. When the subdivider contacts each entity, he/she shall also supply information about the subdivision that is pertinent to the purpose and mission of that entity in order for it to provide an educated response. For example, the subdivider should supply the Polson Fire Department with proposed road grades, widths, construction standards, vegetation reduction measures, water supply, fire-related covenants, conditions and restrictions and other information as applicable.
2. Each entity shall be notified of the deadline to respond in writing to the subdivider's request for review, which shall be a minimum of 30 calendar days. The subdivider may not submit the subdivision application and preliminary plat prior to the conclusion of this 30-day period. This 30-day time period does not preclude the entity from responding at a later date. If the entity response indicates the information provided by the subdivider was insufficient to evaluate the proposal, the subdivider must provide the requested additional information and allow the entity an additional 30 days to review the proposal before a subdivision application may be submitted.
3. A copy of all correspondence sent to the entity, including the plat, vicinity map, cover letter, additional information, and all correspondence received from the entity is required to be submitted along with the subdivision application and preliminary plat.
4. Lack of response to the subdivider's request for review beyond the allotted 30 days shall not result in an incomplete or insufficient application. Should any agency fail to respond within the allotted 30 day timeframe, the subdivider may proceed with an application submittal, and if the subdivider can show that the attempt has been made to obtain a review, the lack of the specific entity review shall not be deemed an omission. However, failure to address a reviewer's comment may result in an incomplete or insufficient application.
5. Public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

I. Subdivision Application and Preliminary Plat Submittal.

1. The subdivider shall submit to the administrator four copies of a preliminary plat application for review. The following informational topics and materials are intended to be a comprehensive list of the items that the subdivider may be required to submit to the administrator for review and show on the preliminary plat. The actual list of information for each subdivision proposal will be determined by the subdivision administrator during the pre-application review based on project-specific and area-specific conditions, as well as the project's scale.
2. Information that may be required to be included in a preliminary plat application:
 - a. Subdivision application form signed by the subdivider and the property owner;
 - b. Review fee;
 - c. Vicinity map;
 - d. Sanitation information to include water, sewer, solid waste and stormwater as required in 76-3-622, MCA;
 - e. Phasing plan or overall development plan if development is proposed in phases;
 - f. Documentary evidence from the public records demonstrating that a claimed first minor subdivision will be the first minor subdivision from a tract of record;
 - g. Copies of all correspondence with the public utilities, local, state and federal agencies and any other entities identified during the pre-application meeting;
 - h. Title Abstract (or Title Report);
 - i. Documentation of legal and physical access to the subdivision and each proposed lot;
 - j. Copies of existing easements, including those for agricultural water user facilities;
 - k. Description of proposed easements;
 - l. Names and addresses of all adjoining property owners and purchasers under contract for deed;
 - m. Typical proposed road cross section and preliminary road plans;
 - n. Existing approach/access/encroachment permits from Montana Department of Transportation, Lake County or the City of Polson;
 - o. Existing water rights;
 - p. Description of the proposed disposition of water rights;
 - q. Irrigation water distribution plan;
 - r. Existing and proposed irrigation users association documents or other irrigation agreements;
 - s. Proposal to meet the parkland dedication requirement including preliminary calculations or waiver request;
 - t. Environmental assessment and/or summary of probable impacts in compliance with state law and these regulations;
 - u. Multi-modal traffic impact study;
 - v. Noxious weed management and re-vegetation plan;
 - w. Landscaping and maintenance plan;
 - x. Existing and proposed covenants, conditions and restrictions and deed restrictions;
 - y. FIRM or FEMA panel map and letter identifying floodplain status;
 - z. Flood hazard evaluation;
 - aa. Draft subdivision improvements agreement;
 - bb. Variance request (subdivision) or approval (zoning);
 - cc. Shoreline buffer plan;
 - dd. Landscape plan;
 - ee. Sign plan;

- ff. Drawings or electronic visual simulations;
- gg. Plans for ownership, use, management, and development guidelines for open space in cluster developments;
- hh. Draft declarations or agreements for all proposed or existing shared private infrastructure (internal streets and parking areas, mail and garbage collection facilities, etc.);
- ii. Grading and drainage plan that addresses tree retention and vegetation management;
- jj. Description of all public and private improvements;
- kk. Plans for public and private improvements;
- ll. Information necessary to demonstrate compliance with zoning and performance standards;
- mm. Runoff management plan (storm drainage report);
- nn. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials;
- oo. Geotechnical soils analysis and development suitability study;
- pp. Cultural assessment form;
- qq. Such additional relevant information as identified by the subdivision administrator during the pre-application meeting that is pertinent to the review of the subdivision proposal; and
- rr. Any other submittal requirements of these regulations that does not appear on this list.

Please note the subdivision administrator may require proposed items such building sites, buffers and road approaches to be staked in the field. Staking may be required to be maintained by the subdivider throughout the preliminary plat review process.

3. Information that may be required to be included on a preliminary plat, site plan or a preliminary plat supplement.

Note: The plat must be drawn to scale on 18-inch by 24-inch paper for first minor subdivisions creating one additional lot and 24-inch by 36-inch paper for all other subdivisions. The plat may consist of one or more sheets.

- a. A standard title block and information to include scale bar, north arrow, and date of preparation.
- b. A name for the subdivision (names cannot be duplicated; First Minor Subdivisions creating one additional lot shall be named "SP-____");
- c. The exterior boundaries of the tract and the approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
- d. A metes and bounds or other legal description, or notation of previously recorded certificate of surveys or subdivision plats;
- e. All lots (or sites for typical recreational vehicle and mobile home parks) and blocks, designated by numbers and/or letters;
- f. The proposed lot boundaries;
- g. The gross and net acreage of each lot;
- h. All existing and proposed streets, alleys, avenues, roads and highways on, adjacent to, within 100-feet of, and serving the property, and the width of the rights-of-way, grades and curvature of each, existing and proposed street names, and proposed locations of intersections or other access points for any subdivision requiring access to arterial or collector highways;
- i. The location, boundaries, dimensions and areas of any parks, common grounds, trails, or other grounds dedicated for public or private use;
- j. The portions of each lot with varying slopes (i.e., a slope map) in accordance with Chapter IV.D.;
- k. Property line setbacks;

- l. Topographic ground contours at required intervals or as appropriate to easily identify grades;
- m. All surface waters, to include irrigation water, on the property and within 100-feet of the exterior boundaries of the subdivision;
- n. All federally recognized or known wetlands on the property and within 100-feet of the exterior boundaries of the subdivision as well as the sources of information upon which this is based (National Wetlands Inventory, CSKT Natural Resources Department, etc.)
- o. The location of all 100-year flood plains;
- p. The location of existing and proposed fences, lighting, signage, sidewalks, paths, storage areas, and other existing or proposed man-made improvements;
- q. The locations and types of all existing and proposed traffic control devices and directional signs;
- r. Existing and proposed shoreline and landscape buffers;
- s. Any proposed or existing “no build zones” and/or building envelopes;
- t. Any existing and proposed utilities located on or adjacent to the property including:
- u. The approximate location, size and depth of water mains, sanitary and storm sewers, and fire hydrants.
- v. The approximate location of nearest water mains and sewer lines where none are located on or adjacent to the property;
- w. The approximate location of gas, electric and telephone lines, and streetlights.
- x. The locations and identity of all existing easements and rights-of-way of record and proposed public and private easements and rights-of-ways, including descriptions of their width and purpose;
- y. The location of any existing or proposed easements for utility services;
- z. The proposed driveways and approaches serving each lot;
- aa. A building site on each proposed lot;
- bb. The location of existing and/or potential buildings/building sites, structures and other improvements;
- cc. Proposed locations of all stormwater management infrastructure;
- dd. All existing and proposed (county only) primary and replacement drainfields on the property and within 100-feet of the exterior boundaries of the subdivision, 76-3-622 MCA;
- ee. All proposed (county only) or existing wells on the property and within 100-feet of the exterior boundaries of the subdivision, 76-3-622 MCA;
- ff. Such additional relevant information as identified by the subdivision administrator during the pre-application meeting that is pertinent to the review of the subdivision proposal; and
- gg. Any other requirements of these regulations that does not appear on this list.

J. Element and Sufficiency Review. For both minor and major subdivisions, the initial review process is as follows:

1. Element (Completeness) Review

- a. Within five working days of receipt⁷ of a subdivision application and fee, the subdivision administrator shall determine whether the application contains all of the applicable materials required in subsection I., above, and shall provide written notice her/his determination to the subdivider.

⁷ A subdivision application is considered to be received on the date of delivery to the reviewing agent or agency and when accompanied by the required review fee as per 76-3-604(1)(a), MCA.

- b. If the subdivision administrator determines elements are missing from the application, he/she shall identify those elements in the notification, and no further action shall be taken on the application by the subdivision administrator until the application is resubmitted.
- c. The subdivider may correct the deficiencies and resubmit 4 copies of the application or additional information to the subdivision administrator, as appropriate.
- d. If the subdivider corrects the deficiencies and resubmits the application or additional information, the subdivision administrator shall have 5 working days to notify the subdivider whether the application contains all the required materials.
- e. This process shall be repeated until the subdivider submits all the required materials or the application is withdrawn.
- f. At the discretion of the subdivision administrator, it may become necessary during this process to return the application copies in their entirety to the subdivider and request entirely new application copies.

2. Sufficiency Review

- a. Within 15 working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in subsection J.1. above, the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of her/his determination.
- b. If the subdivision administrator determines the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify specific required information in her/his notification and no further action shall be taken on the application by the subdivision administrator until the material is resubmitted.
- c. The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.
- d. If the subdivider corrects the deficiencies, the subdivision administrator shall have 15 working days to notify the subdivider whether the required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.
- e. This process shall be repeated until the subdivider submits detailed, supporting information that is sufficient for review of the proposed subdivision under these regulations, or the application is withdrawn.
- f. At the discretion of the subdivision administrator, it may become necessary during this process to return the applications in their entirety to the subdivider and request entirely new application copies.

- g. A determination that an application contains sufficient information for review as provided in this subsection does not ensure the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the subdivision administrator, planning board, or the governing body to request additional information during the review process.
 - h. A determination of sufficiency by the subdivision administrator pursuant to this subsection does not limit the Montana Department of Environmental Quality (MDEQ) from requiring additional sanitation information as part of the MDEQ review of water and sanitation information.
- K. Applicable Regulations.** Pursuant to 76-3-604(9), MCA, review and approval, conditional approval or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review. If regulations change between preliminary approval and final approval, the regulations in effect when the application was deemed to be sufficient shall be used for evaluating compliance with any approval conditions and agreements.
- L. Subdivision Variances.** The governing body may grant variances from the Design and Improvement Standards of these subdivision regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations. The governing body will not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.
- 1. Subdivision Variance Request.** The subdivider shall include with the submission of the preliminary plat application a written statement (and supporting evidence as necessary) describing and justifying the requested variance in consideration of the criteria listed in subsection L.2., below. Except for variance requests for first minor subdivisions, the variance request will be reviewed at a public hearing pursuant to 76-3-506, MCA. Approval or denial of the variance will occur as a separate action prior to a motion for approval, approval with conditions or denial of a preliminary plat application. When a variance is recommended for approval or granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based. A first minor subdivision as provided for in 76-3-609 (2), MCA is not subject to the public hearing requirement.
 - 2. Variance Statement of Facts.** The governing body will not approve a variance unless it finds:
 - a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
 - b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;
 - c. The variance will not cause a substantial increase in public costs; and

- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations or performance standards.

3. **Variance conditions.** In granting variances, the governing body may impose reasonable conditions to secure the objectives of these regulations.

M. Public Hearings and Notification

1. When a public hearing is required by state law and these regulations for subdivision review, at a minimum the Board shall hold a public hearing on the preliminary plat proposal. Public hearings required for subdivision amendment requests and final plat applications shall be held as defined in these regulations.
2. Notification of the time and date of each hearing shall be given by publication in a newspaper of general circulation in Lake County not less than 15 calendar days prior to the date of the hearing.
3. At least 15 calendar days prior to the date of each hearing, notice of the hearing shall be given by certified mail to the subdivider, the landowner if different from the subdivider, each landowner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

N. Administration of Common Property or Facilities, Private Covenants.

1. When physical improvements are shared by more than one lot within the subdivision, but a property owners' association is not to be formed to manage the improvements, a shared use and maintenance agreement for any shared improvements shall be created and recorded with the Lake County Clerk and Recorder's Office. At a minimum, the document shall provide for:
 - a. The regular maintenance of the shared improvements;
 - b. A requirement for equitable payment of the cost of maintaining the shared improvements;
 - c. Allowed adjustments of assessments to meet changing needs;
 - d. A means of enforcing the terms of the declaration;
 - e. An allowance for placement of liens on the property of lot owners who are delinquent in the payment of maintenance fees and assessments; and
 - f. The modification of the declaration after obtaining the governing body's approval of the change.
2. When common property or facilities are to be deeded to or managed by a property owners' association, the covenants and by-laws which govern the subdivision must, at a minimum, provide for:
 - a. The formation of a property owners' association prior to or concurrently with the filing of the final subdivision plat. The property owners' association Articles of Incorporation shall be filed

with the Secretary of State's office. The property owners' association bylaws shall be recorded with the Lake County Clerk and Recorder's Office;

- b. The perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
 - c. A requirement for payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
 - d. A requirement for placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
 - e. A provision to allow adjustment of assessments to meet changing needs;
 - f. A means of enforcing the covenants, and of receiving and processing complaints;
 - g. The transition of control of the association from the Declarant to the property owners;
 - h. The dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
 - i. The regular maintenance of roads, parks, buildings, drainage facilities, and other subdivision facilities controlled by the association.
3. When a proposed subdivision is subject to existing covenants, deed restrictions or any other restrictions filed in the records of the Clerk and Recorder's Office benefiting the city and that the governing body has the right to enforce, all lots shall conform to the restrictions. The governing body reserves the right to notify and seek comment from landowners or an association that is party to the covenants, deed restrictions or other restrictions prior to taking action on a preliminary plat application.

O. Subdivision Appeals.

- 1. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
- 2. A party identified in subsection O.3., below, who is aggrieved by a decision of the governing body to approve, conditionally approve or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 calendar days after the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.
- 3. For the purposes of this section, aggrieved means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision. The following parties may appeal under the provisions above:

- a. The subdivider;
- b. A landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
- c. The county commissioners;
- d. The following municipalities:
 - i. A city of the first class as described in 7-1-4111, MCA if a subdivision is proposed within 3 miles of its limits;
 - ii. A city of the second class, as described in 7-1-4111, MCA if a subdivision is proposed within 2 miles of its limits;
 - iii. A city of the third class, as described in 7-1-4111, MCA if a subdivision is proposed within 1 mile of its limits.

P. Final Plat Contents.

1. The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the governing body and must incorporate all required modifications and comply with all conditions imposed at the time of preliminary plat approval.
2. The final plat shall contain all applicable certificates and dedications required by these regulations and as may be required by the preliminary approval. Administrative Materials provides sample certificates for those not provided within this chapter.
3. The final plat shall describe, dimension, and show public utility easements in the subdivision in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.
4. In addition to showing the location of the utility easements on the plat, the following statement must be on the final plat:
 "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, cable television, internet, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."
5. The final plat and accompanying documents must comply with the Montana Uniform Standards for Final Subdivision Plats (Administrative Rules of Montana 24.183.1107, as may be amended from time to time).

6. Final plats of subdivisions approved for phased development shall be filed sequentially in accordance with the preliminary approval (see Section PP., below).

Q. Final Plat Initial Review—Check Print Review. The subdivider shall submit to the subdivision administrator a fee and a draft final plat (check print) for review by the appropriate officials and the examining land surveyor. The examining land surveyor shall review the plat for errors and omissions in calculation or drafting. After review, the subdivision administrator shall return the draft final plat to the subdivider with requested modifications to be made prior to final plat submittal (if applicable). When the survey data shown on the plat meet the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

R. Amending Approved Preliminary Plats Before Final Plat Approval. If the subdivider proposes to change the plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes, all supporting documents and required fee to the administrator for review.

1. Within 30 working days of receiving the proposed changes, the administrator shall review the changes to determine whether they would cause the preliminary plat to become out of compliance with the zoning and performance standards, subdivision regulations or would be likely to have a negative impact on any of the primary review criteria specified in 76-3-608, MCA, or if the changes are material.⁸ If at any time within the 30-day period the administrator determines the information submitted is not adequate for review, the subdivider shall be notified and the 30-working day review period shall be suspended until the requested information is obtained. If the administrator finds the changes would meet any of the conditions in subsection R.4., below, the changes may be deemed material.
2. If the administrator determines the changes are material, the administrator shall notify the subdivider within 10 working days of making the determination as to what information and additional fees will be necessary to review the modifications. When the subdivider has submitted the required information, the administrator shall conduct element and sufficiency reviews as described in Section J., above. When the information is determined to be sufficient for review, a 35-working day review period shall begin. During this period the administrator shall prepare a report detailing the proposed changes and making a recommendation based on compliance with the subdivision regulations, zoning regulations and performance standards, and other appropriate documents. As applicable, the board and governing body shall hold a properly noticed public hearing on the proposed changes.
3. If the administrator determines the changes are not material, the administrator shall notify the subdivider of the determination and the date of governing body review. The governing body shall make a decision to approve, conditionally approve or deny the changes at a properly noticed public meeting.
4. The following changes, although not an exhaustive list, may be considered material:

⁸ Definition: MATERIAL (as in a material change to an application or plat): Significant, substantially altering the proposal or having an impact on any of the primary review criteria (76-3-608 [3][a], MCA), bringing the proposal out of conformance with the growth policy, zoning or subdivision regulations, or impacting the public's opportunity to provide meaningful comment.

Significant changes to:

- a. Lot configuration or increase in the number of lots;
 - b. Significant road or pedestrian/bicycle facilities;
 - c. Water and/or wastewater system proposals;
 - d. Parkland or open spaces or trails;
 - e. Easement provisions;
 - f. Designated access; or
 - g. Proposed or required changes to conditions of approval;
5. A subdivider whose proposed changes to the preliminary plat have been deemed material by the administrator may appeal the administrator's decision to the governing body by written notice within 10 working days. The subdivider may request a meeting with the governing body and may submit additional evidence to show that the changes to the preliminary plat are not material.
6. If the subdivider or administrator determine that a condition of approval is impossible to comply with due to circumstances outside the subdivider's control, the condition shall be reviewed by the governing body through a properly noticed public meeting in order to determine if the condition may be waived or amended.

S. Final Plat Application Submittal and Review.

1. **Application Submittal.** A completed final plat application form (see Administrative Materials) and all supplementary documents must be submitted to the administrator prior to the expiration of preliminary plat approval period. The submittal shall include, as applicable:
- a. The final plat application form;
 - b. The final plat review fee;
 - c. A signed statement and supporting documentation from the subdivider or designated agent describing how each condition of approval has been satisfied; (Administrative note: Certain conditions of plat approval may be carried out over time and may be enforced through development permit processes and through ongoing compliance monitoring.)
 - d. A title report or abstract dated no less than 30 calendar days prior to the date of submittal that shows the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record;

- e. A signed, dated and notarized statement from each landowner, if different from the subdivider, and each lien holder or claimant of record consenting to the platting of the subdivision dated no less than 30 calendar days prior to the date of submittal;
- f. The original certification document from the MDEQ that contains the approved plans and specifications for sanitary facilities serving the subdivision;
- g. A signed, stamped certification from an engineer licensed in the State of Montana that the applicable improvements associated with the subdivision have been constructed in accordance with the requirements of the standard of these subdivision regulations, Chapter V. and the MDEQ;
- h. A certificate of dedication of public improvements;
- i. A copy of the approved state highway permits when a new road or driveway will intersect with a state highway;
- j. A subdivision improvements agreement, financial guarantee and supporting documentation securing the future construction for all incomplete improvements to be installed (if applicable);
- k. Two 18" x 24" (for first minor subdivisions creating one additional lot) or two 24" x 36" (for all other subdivisions) original final plats on mylar material signed by the subdivider and notarized, completed in accordance with the Uniform Standards for Final Subdivisions Plats.

2. Review by Administrator

- a. The administrator shall review the final plat and all accompanying information to determine whether all conditions and requirements for final plat approval have been met. The administrator will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application, fee, supporting documentation and original copies of the final plat have been received. Final plat applications will not be considered complete until all applicable conditions of preliminary approval have been satisfied and/or a subdivision improvements agreement has been submitted. Once the administrator has found all conditions and requirements have been met, he/she shall notify the governing body of such and forward the documents to the governing body for final review pursuant to subsection S.3., below.
- b. If the administrator determines the final plat and accompanying information differs from the approved or conditionally approved preliminary plat and conditions, the applicant shall be required to follow the procedure described in the subsection R., above.

3. Review and Approval by the Governing Body

- a. Upon receiving notice from the administrator that all conditions of preliminary approval have been met and the final plat may be filed, the governing body shall post notice of its intent to examine the final subdivision plat and application. The notice shall be posted for at least two working days prior to the date of examination. At a meeting open to the public and where the public may comment, the governing body shall approve the final plat application if it conforms to

the conditions of preliminary plat approval and to the terms of the MSPA and these regulations, or deny it pursuant to subsection S.3.c., below.

- b. If the final plat is approved, the governing body shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.
- c. If the final plat is denied, the governing body shall write a letter stating the reason for denial and forward a copy to the subdivider. The governing body will return the final plat to the subdivider within 10 working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

4. Inaccurate or incomplete Information. The governing body may withdraw approval of a final plat if it determines information by the subdivider is inaccurate or incomplete.

T. Final Plat Filing. After it is approved, the final plat may not be altered in any manner except as provided below. The Lake County Clerk and Recorder may not accept any plat for filing that does not bear the governing body's approval in proper form or that has been altered. The Clerk and Recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, and Final Subdivision Plats.

U. Amending Filed Plats

- 1. Changes that will substantially alter the contents of the original approved subdivision application, do not comply with the conditions of preliminary plat approval, or will materially alter any portion of a filed plat (not to include minor boundary adjustments), its land divisions or improvements must be reviewed and approved by the governing body. Any alteration which increases the number of lots, modifies six or more lots, abandons or alters a public road right-of-way or parkland dedication or that is determined by the administrator to have the potential to negatively impact one or more of the primary review criteria for subdivisions must be reviewed and approved by the governing body using the procedure for material amendments described in Amending Approved Preliminary Plats Before Final Plat Approval (Section R.), above.
- 2. The governing body reserves the right to require a current abstract of title for the impacted properties and may not approve an amended final plat without the written consent of the owners and lien holders of all lots which will be modified by the proposed amendment.
- 3. The governing body may not approve an amendment that will place a lot in non-conformance with the design standards contained in the design and improvement standards of these subdivision regulations, or with zoning regulations or performance standards of the PDC unless the governing body or the BOA, as applicable, issues a written variance from the adopted standards.
- 4. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Montana Uniform Standards for Monumentation, and Final Subdivision Plats.

V. Subdivision Improvements Agreement. Prior to approval of the final plat, the subdivider shall have installed all required improvements or have entered into a subdivision improvements agreement

(development agreement) guaranteeing the construction, installation, and maintenance of all incomplete required improvements (76-3-507, MCA). Please see Chapter V.

Division 3 – First Minor Subdivisions

First minor subdivisions containing five or fewer parcels shall be reviewed as set forth in this section. Subsequent minor subdivisions shall be reviewed as major subdivisions (Section X.). All processes and requirements set forth in Division 2, General Procedures, apply to this section. This division also applies to first minor subdivisions for the creation of five or fewer recreational vehicle or mobile home sites.

W. Review Procedure for First Minor Subdivisions.

1. First Minor Subdivision Application and Preliminary Plat Submittal

- a. The subdivider shall submit to the administrator a subdivision application and preliminary plat containing the materials identified in Section I., above and in the pre-application meeting (and pre-application response letter, if applicable); and
- b. Sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record.

2. First Minor Subdivision Exceptions. The following requirements do not apply to first minor subdivisions:

- a. Preparation of an environmental assessment;
- b. Parkland dedication;
- c. Public hearing; and
- d. Review of the subdivision for impacts based on the criteria contained in 76-3-608(3)(a) MCA (agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety).

3. First Minor Subdivision Review Process

- a. Time Period for Approval, Conditional Approval, or Denial. Within 35 working days of the administrator determining the subdivision application and preliminary plat to be sufficient for review, the governing body shall approve, conditionally approve or deny the proposed subdivision, unless the subdivider and the administrator agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins the working day after the administrator mails written notice to the subdivider and/or the subdivider's agent that the subdivision application is sufficient for review.
- b. Public Agency, Service Provider and Utility Review.

- i. Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 35-working day review period. The administrator will make all agency and service provider comments available to the subdivider and to the general public upon request. If, during the review of the application, the administrator contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the administrator shall notify the subdivider of the contact and the timeframe for response.
 - ii. As per 76-3-608(9), MCA, if a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under 76-3-620, MCA, only if the comment or opinion provides scientific information or a published study that supports the comment or opinion.
 - iii. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.
- c. When a proposed subdivision is also proposed to be annexed into the city, the governing body shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible. *See* 76-3-601 and 605, MCA.
- d. Subdivider/Adjacent Landowner Notification.
- i. At least 15 calendar days prior to the scheduled meeting at which the governing body will consider the subdivision, the subdivision administrator shall notify the subdivider, and the landowner if different from the subdivider, of the date and time of the meeting by first class mail.
 - ii. Also, at least 15 calendar days prior to the scheduled meeting of the governing body on the subdivision, the administrator shall notify adjacent landowners of the subdivision proposal by first class mail. At the discretion of the administrator, he/she may also notify non-adjacent potentially affected parties of the proposal. Potentially affected parties include those landowners who share a private road or easement, irrigation facilities (delivery point, ditch, etc.), or are within 150 feet of the subject property.

4. First Minor Subdivision Report, Consideration and Recommendation.

- a. As provided in 76-1-107(2), MCA, the board delegates to the administrator its responsibility to advise the governing body on all proposed first minor subdivisions.
- b. Administrator Report. After the administrator deems the subdivision application is sufficient for review, he/she shall prepare a report for consideration by the governing body. The report shall include:

- i. Proposed findings of fact that consider the subdivision's compliance with and impact on the criteria described in these regulations and the MSPA;
 - ii. A description of any variance requests as well as the pertinent facts and conditions relating to the request;
 - iii. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application, variance requests and preliminary plat;
 - iv. All public and agency comment received; and
 - v. Any other information deemed pertinent by the subdivision administrator.
- c. **Consideration-Standards.** In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the administrator shall base the recommendation on compliance of the preliminary plat application with the following:
 - i. The PDC in its entirety;
 - ii. Other applicable regulations; and
 - iii. The MSPA.
- d. **Consideration-Evidence.** In recommending approval, conditional approval or denial of the subdivision application, the subdivision administrator shall consider, without limitation, the following (as applicable):
 - i. The subdivision application and preliminary plat;
 - ii. Proposed mitigation;
 - iii. The applicable growth policy;
 - iv. Information and testimony provided by potentially impacted parties, and
 - v. Any additional information authorized by law.
- e. No less than 5 working days prior to the scheduled meeting at which the governing body will consider the subdivision, the administrator shall submit the report, proposed findings of fact and recommendation to the subdivider and the governing body.

5. Subdivider's Preference for Mitigation

- a. No later than two working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the administrator the subdivider's comments on and responses to the administrator's

recommendations, as well as any proposed mitigation measures not already discussed with the administrator.

- b. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation. [76-3-608(5)(b), MCA].

6. First Minor Subdivision Governing Body Decision and Documentation

- a. Prerequisites to Approval. The governing body will consider the preliminary plat application at a regularly scheduled meeting for which notice has been posted at least 2 working days prior to the meeting. At the meeting the public may provide testimony. The governing body shall not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:
 - i. Provides easements within and to the proposed subdivision for the location and installation of any planned utilities;
 - ii. Provides legal and physical access to the subdivision and to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
 - iii. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section V., Subdivision Improvements Agreement, of these regulations;
 - iv. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights, have been considered and will be accomplished before the final plat is filed; and
 - v. Assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements have been considered and will be accomplished before the final plat is filed.
- b. Consideration – Standards. In approving, conditionally approving, or denying a first minor subdivision application, preliminary plat and proposed mitigation, the governing body shall consider subsection 6., above and whether the proposed subdivision complies with:
 - i. The PDC in its entirety;
 - ii. Other applicable regulations; and
 - iii. The MSPA.
- c. Consideration – Evidence. In making its decision to approve, conditionally approve, or deny a proposed first minor subdivision the governing body shall consider and weigh the following, as applicable:
 - i. The subdivision application and preliminary plat;

- ii. The MSPA;
 - iii. Proposed mitigation;
 - iv. The Polson Growth Policy;
 - v. The administrator's staff report and recommendations;
 - vi. Information and testimony provided by potentially impacted parties; and
 - vii. Any additional information authorized by law.
 - viii. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application or information submitted during public review indicated the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- d. Documentation of Governing Body Decision
- i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the above subsections.
 - ii. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a written decision within 30 working days, with the appropriate signature, and make the letter available to the public. The letter shall:
 - (A) Contain information regarding the appeal process for the denial or imposition of conditions;
 - (B) Identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - (C) Provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision;
 - (D) Provide the conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved; and
 - (E) Set forth the time limit for final approval, pursuant to subsection W.6.e., below.
- e. Subdivision Application and Preliminary Plat Approval Period
- i. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for three calendar years.

- ii. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension. *See 76-3-610, MCA.*
 - iii. After the application and preliminary plat are approved or conditionally approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required, or if modifications to the preliminary plat are proposed by the subdivider.
 - iv. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate or incomplete.
- f. First Minor Subdivisions – Amended Applications
- i. If the subdivider materially changes the subdivision application or preliminary plat after the sufficiency determination but before the governing body makes its decision, the subdivider shall submit the amended information to the administrator for review and a letter agreeing to the suspension of the 35 working-day review period. This subsection refers to substantial or material changes, and does not preclude the subdivider from proposing mitigation measures to the governing body that are intended to lessen or eliminate impacts, as discussed in subsection W.5., above.
 - ii. Within 10 working days of receiving the amended information, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, as determined in subsection f.v., below.
 - iii. If the administrator determines the changes are not material, the 35-working day review period resumes the working day after the administrator mails notice of the decision to the subdivider.
 - iv. If the administrator determines the changes are material, within 5 calendar days of notification, the subdivider must submit a letter agreeing to the cancellation of the 35-working day review period if the subdivider wishes the changes to be considered. Within 15 working days of the determination, the administrator shall send an addendum (or update) to the original pre-application response letter reflecting the changes and requesting the information and fees needed to review the amended proposal. Upon the administrator's determination the amended subdivision application is complete and sufficient for review, the First Minor Subdivision Review process shall begin as detailed in this Chapter. In extreme cases, where three or more of the changes listed in subsection f.v., below are proposed, the administrator may require the subdivider to submit a new pre-application and begin the subdivision review process from the beginning.

- v. The following changes, although not an exhaustive list, may be considered material⁹:
- Significant changes to:
- (A) Lot configuration or increase in the number of lots;
 - (B) Road or pedestrian/bicycle facilities;
 - (C) Water and/or wastewater system proposals;
 - (D) Parkland or open spaces or trails;
 - (E) Easement provisions; or
 - (F) Designated access.
- vi. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the administrator may appeal the administrator's decision to the governing body within 5 working days of receiving the determination. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material subject to the following:
- vii. By appealing the decision of the administrator, the subdivider agrees to suspension of the 35-working day review period;
- viii. The 35-working day review period is suspended until the governing body decision on the appeal is made. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the provisions of subsection iv. (above) take effect; and
- ix. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 35-working day review period resumes on the day following the decision.
- g. First Minor Subdivision Final Plat. The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in sections P. and Q., above.
- h. Subsequent Minor Subdivisions. A Subsequent Minor Subdivision is any subdivision with five or fewer lots that is not a first minor subdivision. Subsequent minor subdivisions shall be reviewed as major subdivisions (Section X., below).

⁹ Definition: MATERIAL (as in a material change to an application or plat): Significant, substantially altering the proposal or having an impact on any of the primary review criteria (76-3-608 [3][a], MCA), bringing the proposal out of conformance with the growth policy, zoning or subdivision regulations, or impacting the public's opportunity to provide meaningful comment.

Division 4 – Major and Second or Subsequent Minor Subdivisions

Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots or recreational vehicle or mobile home sites, or subdivisions of five or fewer lots or sites that do not otherwise qualify for review as first minor subdivisions under 76-3-609, MCA and these regulations. All processes and requirements set forth in Section 2, General Procedures, apply to this section.

X. Review Procedure for Major Subdivisions.

- 1. Subdivision Application and Preliminary Plat Submittal.** The subdivider shall submit to the administrator a subdivision application, environmental assessment, preliminary plat and supplementary materials identified in Section I., above, and in the pre-application meeting (and in the pre-application response letter, if applicable).
- 2. Time Period for Approval, Conditional Approval, or Denial.** Within 60 working days, or 80 working days if the proposed subdivision contains 50 or more lots, of the administrator determining the subdivision application and preliminary plat submittal (subdivision application) to be sufficient for review, the governing body shall approve, conditionally approve or deny the proposal according to the terms of these regulations unless the subdivider and the administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to these regulations. The review period begins the working day after the administrator mails written notice to the subdivider and/or the subdivider's agent in writing that the subdivision application and preliminary plat submittal is sufficient for review.
- 3. Public Agency, Service Provider and Utility Review.**
 - a. Review and comment by public agencies, service providers or utilities may not delay the governing body's action on the subdivision application beyond the 60 or 80-working day review period. The administrator will make all agency and service provider comments available to the subdivider and to the general public upon request. If, during the review of the application, the administrator contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.
 - b. As per 76-3-608(9), MCA, if a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under 76-3-620, MCA, only if the comment or opinion provides scientific information or a published study that supports the comment or opinion.
 - c. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.

4. Public Hearings and Notices.

- a. The planning board and governing body shall each hold a public hearing on all major and subsequent minor subdivision applications. The hearings shall follow the procedure described in Chapter III., Section V.
- b. Public Notice
 - i. The administrator shall give notice of the time, date and location of any public hearing by publication in a newspaper of general circulation in Lake County not less than 15 calendar days prior to the date of the board hearing.
 - ii. At least 15 calendar days prior to the date of the board hearing, notice of the hearing shall be given by certified mail to the subdivider, the landowner if different from the subdivider, each landowner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat. At the discretion of the administrator, she/he may also notify non-adjacent potentially affected parties of the proposal. Potentially affected parties include those landowners who share a private road or easement, irrigation facilities, or are within 150 feet of the subject property. Discretionary notices are not required to be sent by certified mail.
 - iii. At least 15 calendar days prior to the date of the board hearing, the subdivider shall post a minimum of one notice at a conspicuous place on the site of the proposed subdivision. This notice shall be printed on laminated orange paper no smaller than 11" x 17" in size and be clearly visible from the most heavily traveled way(s) adjoining the property and include the information listed in subsection 4.b.iv., below. It is the subdivider's obligation to maintain this information on the property until a determination has been made on the preliminary plat application.
 - iv. At a minimum all notices shall include a general description of the property location, the legal description of the property, the number of lots or units proposed, the type of land use(s) proposed, a description of any variances requested, notification of where more information may be obtained, and the time, date and location of the hearing.
- c. Public Hearing, Consideration and Recommendation. After the subdivision application is deemed to be sufficient for review, notice has been provided as described above and the administrator has prepared a staff report, the planning board shall hold a public hearing on the subdivision application. The administrator's report to the planning board shall include:
 - i. Proposed findings of fact that consider the subdivision's compliance with and impact on the criteria described in these regulations and the MSPA;
 - ii. A description of any variance requests as well as the pertinent facts and conditions relating to the request, and a recommendation on the variance request;
 - iii. All public and agency comment received by the administrator. As a matter of practice all comments and documents regarding the subdivision shall be submitted in writing to the

administrator prior to the public hearing on the subdivision to be made part of the staff report to the board. However, all comments and documents which are presented directly to the board at the public meeting, shall be included in the public record;

- iv. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat; and
 - v. Any other information deemed pertinent by the subdivision administrator.
- d. Consideration-Standards. In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the board shall base its recommendation on compliance of the subdivision application with the following:
- i. The PDC in its entirety;
 - ii. Other applicable regulations;
 - iii. The MSPA, including but not limited to the following impacts based on the criteria contained in 76-3-608(3)(a), as discussed in the applicable growth policy: impact on agriculture; impact on agricultural water user facilities; impact on local services; impact on the natural environment, including historical features; impact on wildlife; impact on wildlife habitat; and impact on public health and safety.
- e. Consideration-Evidence. In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the board shall consider, without limitation, the following (as applicable):
- i. The subdivision application and preliminary plat;
 - ii. The environmental assessment;
 - iii. The summary of the probable impacts discussed in subsection 4.e.iii, above;
 - iv. Proposed mitigation;
 - v. The applicable growth policy;
 - vi. Information and testimony provided by potentially impacted parties;
 - vii. The administrator's staff report and recommendation; and
 - viii. Any additional information authorized by law.
- f. Written Recommendation. Within 10 working days after the public hearing, the administrator, working on behalf and with the consent of the planning board, shall submit the following, in writing, to the subdivider and the governing body:

- i. Planning board recommended findings of fact based on the evidence listed in subsection 4.f., above, that discuss and consider the subdivision's compliance with and impact on the standards contained in the documents listed in subsection 4.e., above;
- ii. A recommendation for approval or denial of any requested variances;
- iii. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;
- iv. Information and testimony provided by potentially impacted parties at or before the public hearing; and
- v. Any other information deemed pertinent by the administrator.

5. Subdivider's Preference for Mitigation

- a. No later than five working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the administrator the subdivider's comments on and responses to the planning board's recommendations as well as any proposed mitigation measures not already discussed with the administrator and/or planning board.
- b. The governing body shall consider all of this information and make findings whether or not the newly proposed mitigation measures should be considered material based on the criteria described in subsection X.10., below, Amended Applications.
- c. If the governing body determines the newly proposed mitigation measures to be material, the governing body shall either not consider the mitigation proposal or direct the subdivider to follow the procedures provided for under subsection X.10., below, Amended Applications.
- d. If newly proposed mitigation measures are determined not material, the governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation prior to making a decision. [76-3-608(5)(b), MCA].

6. Governing Body Public Hearing

- a. After the planning board makes its recommendation, the governing body shall hold a public hearing on the subdivision application. When a proposed subdivision is also proposed to be annexed into the city, the governing body shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible. See 76-3-601 and 605, MCA.
- b. As a matter of practice, all comments and documents regarding the subdivision shall be submitted in writing to the subdivision administrator prior to or at the planning board public hearing on the subdivision to be made a part of the record. However, if comments and documents are presented directly to the governing body at a public hearing, the proceedings shall not be voided, unless as provided below.

- c. As per 76-3-615, MCA, the governing body shall determine whether subdivider's or public's comments and/or documents presented for consideration at its public hearing constitute either:
 - i. Information or analysis of information that was presented at the planning board's public hearing on the subdivision application that the public has had a reasonable opportunity to examine and comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
 - ii. New information or analysis of information that has never been submitted as evidence or considered by the planning board at a hearing on the subdivision application, in which case the governing body shall proceed as set forth in subsection 6.d., below.
- d. If the governing body determines that public comments or documents presented at the hearing constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence or considered by the planning board at the public hearing on the subdivision application, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to subsections 6.h. and 6.i., below.
- e. If the governing body determines the information or analysis of information is either not relevant or not credible, the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
- f. If the governing body determines the new information or analysis of information is relevant and credible, the governing body shall schedule or direct the subdivision administrator to schedule a subsequent public hearing pursuant to subsection 6.g., below; and
- g. At the subsequent hearing the planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- h. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- i. New information or analysis of information is considered to be credible if it is based on one or more of the following:
 - i. Physical facts or evidence;
 - ii. Supported personal observations;
 - iii. Evidence provided by a person with professional competency in the subject matter; or
 - iv. Scientific data supported by documentation.

7. Subsequent Public Hearing

- a. If a subsequent public hearing is held, it must be held within 45 calendar days of the governing body's determination to schedule a subsequent hearing. The planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- b. The administrator shall give notice of the time, date and location of the public hearing by publication in a newspaper of general circulation in the county not less than 15 calendar days prior to the date of the hearing.
- c. At least 15 calendar days prior to the date of each hearing, notice of the hearing shall be given by certified mail to the subdivider, the landowner if different from the subdivider, each landowner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- d. At least 15 calendar days prior to the date of the public hearing before the planning board, the subdivider shall update the on-site notices of the proposed subdivision to reflect the new information and hearing schedule.
- e. If a subsequent public hearing is held, the 60 or 80-working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60 or 80-working day review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

8. Governing Body Decision and Documentation.

- a. Prerequisites to Approval. The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:
 - i. Provides easements for the location and installation of any planned utilities, both on and off site;
 - ii. Provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
 - iii. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided in a Subdivision Improvements Agreement (Section V.);
 - iv. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights have been considered and will be accomplished before the final plat is filed;
 - v. Assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements have been considered and will be accomplished before the final plat is filed; and

- vi. Provides for the appropriate park dedication or cash-in-lieu.
- b. Consideration-Standards. In approving, conditionally approving, or denying a subdivision application, preliminary plat and proposed mitigation, the governing body shall consider subsection 8.a., above, and whether the proposed subdivision complies with:
 - i. The PDC in its entirety;
 - ii. Other applicable regulations; and
 - iii. The MSPA, including but not limited to the following impacts based on the criteria contained in 76-3-608(3)(a), as discussed in the applicable growth policy: impact on agriculture; impact on agricultural water user facilities; impact on local services; impact on the natural environment, including historical features; impact on wildlife; impact on wildlife habitat; and impact on public health and safety.
- c. Consideration-Evidence. In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body shall consider and weigh the following, as applicable:
 - i. The subdivision application and preliminary plat;
 - ii. The environmental assessment;
 - iii. The summary of probable impacts discussed in 8.b.iii, above;
 - iv. Proposed mitigation;
 - v. The applicable growth policy;
 - vi. Information and testimony provided by potentially impacted parties at or before the public hearing;
 - vii. The administrator's staff report and recommendation;
 - viii. Planning board recommendation; and
 - ix. Any additional information authorized by law.
 - x. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds the application or information submitted during public review indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations.

Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a

subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

d. Documentation of Governing Body Decision

- i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the above subsections.
- ii. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a written decision within 30 working days, with the appropriate signature, and make the letter available to the public. The letter shall:
 - (A) Contain information regarding the appeal process for the denial or imposition of conditions;
 - (B) Identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - (C) Provide the facts and conclusions the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision;
 - (D) Provide the conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved; and
 - (E) Set forth the time limit for final approval subject to subsection 9., below.

9. Subdivision Application and Preliminary Plat Approval Period

- a. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for three calendar years.
- b. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension. [76-3-610, MCA]
- c. After the application and preliminary plat are approved or conditionally approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required, or if modifications to the preliminary plat are proposed by the subdivider.
- d. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate or incomplete.

10. Major Subdivisions - Amended Applications

a. After Sufficient Application Determination and Before the Planning Board Public Hearing.

- i. If the planning board holds an introductory meeting on a subdivision application and at the meeting the planning board requests clarification, reconsideration or additional information from the subdivider, the subdivider may submit the requested information, supporting documents, and amendments to the application materials to the administrator no more than 5 working days after the introductory meeting without penalty. The subdivider may choose not to submit any additional information.
- ii. If the subdivider submits the information requested by the planning board after more than 5 working days, or, except as provided in 10.a.i., above, changes the subdivision application or preliminary plat after the administrator makes a determination of sufficiency but before the planning board public hearing, the subdivider shall submit the amended application or additional materials to the subdivision administrator for review, and a letter agreeing to the suspension of the review period.
- iii. Within 5 working days of receiving the additional or modified information pursuant to 10.a.ii., above, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material.
- iv. The 60 or 80-working day review period is suspended while the administrator considers whether the changes to the subdivision application or preliminary plat are material.
- v. If the administrator determines the changes are not material, the review period resumes the working day after the administrator mails notice of the decision to the subdivider.
- vi. If the administrator determines the changes are material, within 5 days of notification, the subdivider must submit a letter agreeing to the cancellation of the 60 or 80-working day review period if the subdivider wishes the changes to be considered. Within 15 days of the determination, the administrator shall send an addendum (or update) to the original pre-application response letter reflecting the changes and requesting the information and fees needed to review the amended proposal. Upon the administrator's determination the amended subdivision application is complete and sufficient for review, the Major Subdivision Review process shall begin as detailed in this section X. In extreme cases, where three or more of the changes are proposed that qualify as material, the administrator may require the subdivider to submit a new pre-application and begin the subdivision review process from the beginning.

b. After the Planning Board Hearing But Before the Governing Body Hearing.

Except as provided in subsection 5. above, Subdivider's Preference for Mitigation, if the subdivider submits additional or modified information after the planning board's hearing but before the governing body's hearing:

- i. Within 5 working days of receiving the additional or modified information, the administrator shall determine whether the changes to the subdivision application or preliminary plat are material.
 - ii. The 60 or 80-working day review period is suspended while the administrator considers whether the changes to the subdivision application or preliminary plat are material. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period.
 - iii. If the administrator determines the changes are not material, the 60 or 80-working day review period resumes the day after the administrator mails notice of the decision to the subdivider.
 - iv. If the administrator determines the changes are material, the administrator shall schedule a new planning board hearing to take comment on the modified or additional information. Public notice shall be published, mailed and posted and a supplemental staff report shall be prepared to address the changes to the original application.
 - v. If a new planning board hearing is held, the 60 or 80-working day review period is suspended for the time period between notice of the administrator's determination and 10 working days after the date of the second Planning Board hearing.
- c. The following changes, although not an exhaustive list, may be considered material¹⁰:
- Significant changes to:
- (A) Lot configuration or increase in the number of lots;
 - (B) Road or pedestrian/bicycle facilities;
 - (C) Water and/or wastewater system proposals;
 - (D) Parkland or open spaces or trails;
 - (E) Easement provisions; or
 - (F) Designated access.
- d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the administrator may appeal the administrator's decision to the governing body within 5 working days of receiving the determination. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material subject to the following:

¹⁰ Definition: MATERIAL (as in a material change to an application or plat): Significant, substantially altering the proposal or having an impact on any of the primary review criteria (76-3-608 [3][a], MCA), bringing the proposal out of conformance with the growth policy, zoning or subdivision regulations, or impacting the public's opportunity to provide meaningful comment.

- i. By appealing the decision of the administrator, the subdivider agrees to suspension of the 60 or 80-working day review period;
 - ii. The 60 or 80-working day review period is suspended until the governing body decision on the appeal is made;
 - e. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the administrator shall schedule a rehearing in front of the planning board pursuant to subsection b.iv., above; and
 - f. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the 60 or 80-working day review period resumes as of the date of the decision.
11. Major Subdivision Final Plats. The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate Final Plats requirements contained in P. and Q., above.

Division 5 – Exemptions from the Subdivision and Platting Act

Y. Exemptions from the Subdivision and Platting Act (MSPA).

The MSPA provides that certain divisions of land are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3, MCA. Subdivision regulations, must, at a minimum, establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition, using the exemptions provided in 76-3-201 or 76-3-207, MCA, is an attempt to evade comprehensive subdivision review.

1. General Procedures

- a. Any person seeking exemption from the requirements of the MSPA shall submit to the administrator a certificate of survey or, where a survey is not required, an instrument of conveyance and evidence of, and an affidavit affirming, entitlement to the claimed exemption. Use of the family transfer exemption (76-3-207[1][b], MCA) also requires a separate application (see Administrative Materials).
- b. When a certificate of survey, instrument of conveyance and/or family transfer application are submitted, the administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g., Administrator, County Sanitarian, City Engineer, City Manager, City Attorney). The agents shall review the proposed use of the exemptions within 30 days of submittal to determine whether it complies with the requirements set forth in this section, the MSPA, and the Montana Sanitation in Subdivisions Act.
- c. If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, after appropriate review of the survey by the examining land surveyor and when all appropriate signatures are in place, they shall advise the Lake County Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and

accompanying documents. If the agents find the proposed use of the exemption does not comply with the statutes and the criteria in this section, the administrator shall advise the clerk and recorder to not file or record the documents and return the documents to the landowner.

- d. Any person whose proposed use of exemption has been denied by the designated agents may appeal the agents' decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is appropriate and not intended to evade the MSPA, and, thereby overcome any presumption of evasion. If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the MSPA or is otherwise appropriate, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

If the use of an exemption is denied, the landowner may submit a subdivision application for the proposed land division.

- e. Advisory Examination. Landowners or their representatives are encouraged to meet with the City's designated agents to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.
- f. The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading the MSPA, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction(s) is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review. (State ex rel. Dreher v. Fuller, 50 St. Rpt. 454, 1993)
- g. Identification Codes. To assist in the implementation of this review process and to monitor those divisions of land by exemption which are located outside a platted subdivision, the Lake County Clerk and Recorder may cause the following identification codes to be added to the numbering of recorded certificates of survey:

CO Court Order [76-3-201(1)(a), MCA]

ME Mortgage Exemption [76-3-201(1)(b), MCA]

MS Subsurface Ownership Interest [76-3-201(1)(c)],
Cemetery Lots [76-3-201(1)(d), MCA],
Life Estate [76-3-201(1)(e), MCA],
Lease for Agricultural Purpose [76-3-201(1)(f), MCA],
Other exemptions listed in 76-3-205 MCA & 76-3-209 MCA

NJ Location of no state jurisdiction [76-3-201(1)(g), MCA],

UT Utility Exemption [76-3-201 (1)(h)],

- RB Relocation of Common Boundary [76-3-207(1)(a & e), MCA],
 - FT Family Transfer [76-3-207(1)(b), MCA],
 - AE Agricultural Exemption [76-3-207(1)(c), MCA],
 - OS Occasional Sale (used prior to April 6, 1993),
 - AL Aggregation of Lots [76-3-207(1)(f), MCA],
 - RT Retracement of an existing tract or that provides other material evidence not appearing on any map filed with the county clerk and recorder, reveals a material discrepancy in the map, discloses evidence to suggest alternate location of lines or points, or establishes one or more lines not shown on a recorded map [(76-3-404(1), MCA].
- h. Exempt divisions of land that would result in a pattern of development equivalent to a subdivision may be presumed to be adopted for purposes of evading the MSPA based on the surrounding circumstances in subsection Y.1.f., above.
 - i. All parcels and the use of all parcels created or amended through the use of an exemption shall comply with the zoning and performance standards of the PDC's zoning regulations. This does not allow the City of Polson to require lots resulting from exempt divisions to comply with Chapter IV, Division 6 – Design and Improvement Standards.

2. Specific Exemptions

- a. A gift or sale to a member of the immediate family (76-3-207[1][b], MCA).
 - i. Statement of Intent. The intention of this exemption is to allow a landowner to convey one parcel to each of member of the immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.
 - ii. Immediate family means a spouse, children by blood or adoption, and parents of the grantor.
 - iii. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance.
 - iv. The certificate of survey or instrument of conveyance shall be accompanied by a deed or other conveying document.
 - v. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under this subsection. However, the use of the exemption may not create more than one remaining parcel of less than 160 acres.

- vi. Any proposed use of family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the MSPA. This presumption is in effect regardless of previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.
 - vii. The use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan shall constitute a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.
 - viii. Owners of the newly created parcel(s) shall be required to waive their right to sell their parcel(s) for a period of two years from the date of document recordation unless otherwise permitted by the governing body.
- b. Exemption to provide security for a construction mortgage, lien or trust indenture (76-3-201[1][b], MCA).
- i. Statement of Intent. Under policies by many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a landowner who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property. This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed lot. This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a smaller parcel of the tract because the smaller tract is required as security for a building construction loan.
 - ii. When this exemption is to be used, the landowner shall submit with the affidavit affirming entitlement to the claimed exemption to the administrator:
 - (A) A statement of how many parcels within the original tract will be created by use of the exemption;
 - (B) The deed, trust indenture or mortgage for the exempt parcel (which states that the tract of land is being created only to secure a construction mortgage, lien or trust indenture);
 - (C) A statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted parcel is conveyed; and
 - (D) A signed statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.

- iii. The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:
 - (A) It will create more than one building site;
 - (B) The financing is not for construction on the exempted parcel;
 - (C) The person named in the statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed is anyone other than the borrower of funds for construction.
 - (D) Title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs.
 - (E) It appears that the principal reason the parcel is being created is to create a building site and using the parcel to secure a construction loan is a secondary purpose.
- c. Exemption for agricultural purposes (76-3-207[c], MCA).
 - i. Statement of Intent. The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial or industrial buildings will be built.
 - ii. Agricultural purpose. For purposes of these evasion criteria, agricultural purpose means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. The parcel must meet Montana Department of Revenue criteria for agricultural land valuation. Agricultural lands are exempt from review by the MDEQ, provided the applicable exemption is properly invoked by the property owner.
 - iii. The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes of evading the MSPA
 - (A) The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by the property owner, the buyer or lessee and the governing body.
 - (B) The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings will be built (e.g., a statement signed by the buyer).
 - (C) Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.

(D) Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked.

d. Relocation of common boundaries and aggregation of lots (76-3-207[1][a], [d],[e], and [f]).

- i. Statement of Intent. The intended purpose of this exemption is to allow a change in the location of one or more boundary line between parcels and to allow transfer of the land without subdivision review.
- ii. Certificates of survey claiming one of these exemptions must clearly distinguish between the existing boundary location and the new boundary. This shall be accomplished by showing all parcels on the certificate of survey and representing the existing boundary with a dashed line and the new relocated boundary with a solid line. The descriptions and area of relocated parcels shall be shown on the certificate of survey. The appropriate certification must be included on the certificate of survey.
- iii. If the relocation of common boundaries would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision.

e. Remaining Parcels of Land.

- i. Statement of Intent. A remaining parcel of land is only that portion of the original tract that is left following the segregation of other parcels from the tract created by the following exemptions from the Montana Subdivision and Platting Act:
 - (A) Divisions are made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member or the landowner's immediate family;
 - (B) Divisions made outside of platted subdivisions by gift, sale or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes.
- ii. To exempt these remaining parcels of land from the requirements of Section 76-3-401 and Section 76-4-103, MCA, the parcels must be able to be described as a 1/32 or larger aliquot part of a United States Government section.
- iii. A landowner claiming that a parcel is a remaining parcel must present evidence that the parcel is in fact intended to be retained and is not to be transferred. Examples of such evidence include the existence of the landowner's residence on the parcel and building plans for a structure to be built by or for the landowner. The landowner shall be prohibited from conveying the remaining parcel for a period of two years when a remaining parcel is claimed under this subsection. For the purpose of a remainder parcel created by a subdivision, only those parcels in excess of 160 acres remaining after the subdivision of a single undivided ownership of record would qualify as a remainder.

f. Condominiums, Townhomes, or Townhouses.

- i. Statement of Intent. Generally condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, MCA, are subject to review as subdivisions as described in this chapter, but under certain circumstances they may be exempt from review pursuant to 76-3-203, MCA.
- ii. Exemption. Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, MCA, constructed on land subdivided in compliance with parts 5 and 6 of the MSPA or on lots within the incorporated city limits of Polson are exempt from subdivision review if:
 - (A) The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes or townhouses and any applicable park dedication requirements of 76-3-621, MCA are complied with; or
 - (B) The condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.
- iii. To use the exemption, the Declaration of Unit Ownership must include an exhibit containing certification from the City of Polson that the condominiums are exempt from review under 76-3-203, MCA. [See 70-23-301, MCA] Only the City of Polson has the authority to determine whether a division of land is exempt from subdivision review. The act of recording a condominium declaration does not establish the declaration's validity simply because the clerk and recorder's office accepted and recorded it.
- iv. To obtain City of Polson certification that the condominiums, townhomes, or townhouses are exempt from review as a subdivision, the person seeking the use of the exemption shall submit evidence of and an affidavit affirming entitlement to the exemption to the subdivision administrator, who shall cause the documents to be reviewed by the designated agents.
- v. Within 30 working days of the receipt of the affidavit and evidence, the designated agents shall render a decision certifying or denying the use of the exemption.
- vi. If the subdivision administrator denies the use of the exemption, the person seeking the use of the exemption may appeal the decision of the subdivision administrator to the governing body under VI.Y.1.d.
- g. Exemptions not requiring action by the City of Polson:
 - i. A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the subdivision review requirements of this chapter or the MSPA, provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities. [See 76-3-205(1), MCA]
 - ii. A division of state-owned land is not subject to the subdivision review requirements of this chapter or the MSPA unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974. [See 76-3-205(2), MCA]

- iii. This chapter and the MSPA do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.
- iv. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA and these regulations. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. [44 A.G. Op. 25 (1992)].

Division 6 – Design and Improvement Standards

Z. Lands Unsuitable for Subdivision

Land that the governing body determines is unsuitable for subdivision because of natural or human caused hazards, requirements for excessive expenditure of public funds, or which may be detrimental to the public health, safety or welfare of the general public shall not be subdivided for building or residential purposes unless the hazards or public detriments are eliminated or will be overcome by appropriate design, infrastructure completion and/or other construction techniques and mitigation measures. The governing body shall identify through the subdivision review process potential hazards such as flooding, landslides, excessively steep terrain, high potential for wildfire, high voltage lines, high pressure gas lines, rock falls, snow avalanches, subsidence, high water table, polluted or non-potable water, aircraft or vehicular traffic hazards or congestion, or severe toxic or hazardous waste exposure, and any potential environmental degradation.

AA. Floodplain Provisions

1. Land located in the floodway of a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the governing body to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.
2. If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC) a flood hazard evaluation, including the calculated 100 year frequency water surface elevations and the 100 year floodplain boundaries. This detailed evaluation must be performed by a licensed professional engineer or geologist experienced in this field of work. The evaluation must, at a minimum, follow the “guidelines for obtaining 100-year flood elevations in Approximate Zone A or unmapped areas” which may be obtained from the Montana DNRC.

3. The subdivider shall be responsible to solicit comment from DNRC and if required obtain a floodplain delineation for the subject property reviewed and approved by the City of Polson Floodplain Administrator which shall be submitted to the subdivision administrator along with the preliminary plat application.
4. The above requirement is waived if the subdivider contacts the Water Resources Division and that agency states in writing that available data indicate that the proposed subdivision is not in a flood hazard area. However, the DNRC may require additional information following the above guidelines to ensure there are no flood hazards.
5. Within the Regulated Flood Hazard Area, subdivisions including new or expansion of existing manufactured home parks, must be designed to meet the following criteria:
 - a. The Base Flood Elevations and boundary of the Regulated Flood Hazard area must be determined and considered during lot layout and building location design;
 - b. Locations for future structures and development must be reasonably safe from flooding; (44 CFR 60.3(a)(4))
 - c. Adequate surface water drainage must be provided to reduce exposure to flood hazards; (44 CFR 60.3 (a)(4)(iii))
 - d. Public utilities and facilities such as sewer, gas, electrical and water systems must be located and constructed to minimize or eliminate flood damage; and (44 CFR 60.3(a)(4)(ii))
 - e. Floodplain permits must be obtained according to these regulations before development occurs that is within the Regulated Flood Hazard Area. (44 CFR 60.3(b))

BB. Lots

1. Minimum lot sizes shall conform to the regulations of the zoning district in which the property is located.
2. All lots shall be developed in accordance with Chapter II, Zoning Districts, and Chapter IV, Performance Standards.
3. All lots shall contain one or more buildable area to support the proposed use of the property and conform to MDEQ regulations. The administrator may require a buildable area for one or more lots be shown on a preliminary and/or final plat. The following are characteristics of a buildable area, prior to or after site alteration:

- a. A buildable area shall be at least 2,500 square feet in size on $\leq 35\%$ slope and reasonably shaped to support the intended development. If the subdivision application includes a geotechnical evaluation that indicates slopes in excess of 30% at a building site can be reasonably developed with the intended use, and stormwater is to be contained, erosion controlled, and fire department access is deemed adequate for the proposed development at that building site, slopes in excess of 30% may be included in the buildable area.
 - b. A buildable area shall be accessible by a 12-foot wide driveway with a maximum grade of 12%, and a maximum 5 percent slope for the initial 20 feet from the primary access road to the lot (when accessing a collector or arterial);
 - c. An area on a lot may only be considered buildable where groundwater is greater than 4 feet from the surface;
 - d. A buildable area shall be located outside of all building setbacks required by zoning.
 - e. An area on a lot may only be considered buildable where groundwater is greater than 4 feet from the surface;
 - f. A buildable area shall be located outside of all building setbacks required by zoning.
4. If any portion of the proposed buildable area exceeds 20% slope, contour elevations with a maximum of 2-foot intervals shall be shown on the preliminary plat for that area. Where high groundwater is evident or suspected in the area, the subdivision administrator may request soil profiles to demonstrate depth to groundwater and/or a geotechnical soils analysis and development suitability study.
 5. Any buildable area that exceeds 25% in average slope shall be required to undergo a geotechnical soils analysis and development suitability study conducted by a licensed professional engineer prior to final plat approval. The soils analysis must demonstrate that development of the building site is feasible and would pose no significant geological hazard to the lot or to neighboring properties. The geotechnical analysis shall be filed along with the final plat and all construction on the lot shall comply with the recommendations of the analysis. In the event the geotechnical engineer determines the lot to be unbuildable, that lot shall be consolidated into the adjoining parcels or designated as open space on the final plat.
 6. Wetlands and drainage ditches shall not be included as part of any designated buildable area unless the subdivider demonstrates the impact to the wetland or ditch can be mitigated pursuant to applicable law and not cause a negative impact to the natural environment or create a potential nuisance for future lot owners.
 7. Corner lots shall be designed to have sufficient width to permit appropriate building setbacks from both roads and to provide acceptable visibility for traffic safety.
 8. Lot width, shape and orientation shall be appropriate for the location and contemplated use of the subdivision.

9. Lots may be created that are not intended for building (e.g., a park or a utility lot). In these cases, the preliminary and final plats shall clearly designate the intended purpose of the lot.
10. No lot may be divided by a municipal boundary line.
11. No lot may be divided by a public or private road or alley, right-of-way or access easement.
12. No lot may be divided by a public or private utility easement, including irrigation related easements, unless the subdivision application demonstrates that the easement will not limit access to all portions of the property, and that the easement will not interfere with development on the building site.
13. A stream or creek shall not divide a lot unless both sides of the parcel are provided access sufficient to support the intended purpose (e.g., direct road access to both sides of the water body or a vehicle crossing may be developed with the appropriate permit).
14. Flag lots are prohibited. A flag lot is a lot with a narrow extension whose only purpose is providing access to the main body of the lot and avoidance of road construction requirements.
15. Unless validly exempted, all lots less than 160 acres in size are required to undergo subdivision review.

CC. Access (Streets and Roads, Pedestrian and Bicycle Facilities)

1. **Legal and Physical Access Required.** All developments, and all lots or parcels, shall have safe, direct, legal and physical access to a dedicated public street that complies with the *City of Polson Standards for Design and Construction*. Please see Chapter IV for additional street, driveway, pedestrian and bicycle access requirements. When a subdivision is adjacent to an existing or planned trail system, and when extending the trail is determined to be related to the subdivision in both nature and extent, the subdivider shall continue that trail system across the subject property within an appropriate easement for the trail. All trails shall be built in conformance with the *City of Polson Standards for Design and Construction*.
2. **Relationship to Unsubdivided Areas.** When a proposed subdivision adjoins land that, in the estimation of the governing body, is likely to be subdivided in the future and has the ability to efficiently connect existing, currently separate roads, the subdivider shall provide one or more easement for the logical continuation of the subdivision road(s) and utilities to the adjacent land. This requirement shall not apply when access is otherwise available in a manner adequate to provide for the future convenient dispersal and movement of traffic, connection of neighborhoods, effective provision of emergency services and provision of utilities. This requirement may be waived by the governing body when one of the following criteria is met:
 - a. Topography or other physical conditions would make it impractical to provide access to adjacent unsubdivided land; or
 - b. When the adjoining unsubdivided land is under public ownership, is subject to a conservation easement, deed restriction, or some other situation exists where the future subdivision and development of that land is unlikely.

- 3. Relationship to Subdivided Areas.** The subdivider shall arrange the subdivision roads for their continuation to adjacent subdivided land (land or parcels created through the subdivision platting process) when continuation is deemed necessary by the governing body for the convenient dispersal and movement of traffic, connection of neighborhoods, effective provision of emergency services and provision of utilities. The subdivider may develop a payback agreement to recoup a proportional share of the costs associated with extending infrastructure to lands when they are developed.
- 4. Title to Roadways.** All new subdivision streets in the city shall be dedicated in fee simple title to the City. Where public streets or roads or other public access facilities are dedicated, final plats shall include the following language:

“I(We), the undersigned property owner(s), do hereby certify that I (We) have caused to be surveyed, subdivided and platted into lots, blocks, streets and alleys, as shown by the plat here to annexed, the following described land in the City of Polson, to wit:

(Exterior boundary description of area contained in plat and total acreage).

The above described tract of land is to be known and designated as (Name of Subdivision), and the lands included in all streets, avenues, alleys, and parks shown on said plat are hereby granted and donated to the City forever.”

Dated this ____ day of _____, 20__.

(Acknowledged and notarized signatures of all record owners of platted property.)

5. Rights-of-Way and Easements

- a. Location and Width: Rights-of-way and easements shall be located to provide in a manner and wide enough for unobstructed use and maintenance in accordance with the *City of Polson Standards for Design and Construction*.
- b. Use: Rights-of-way and public access and utility easements may be used for roads, common driveways, sidewalks, pedestrian and bicycle paths, snow storage, stormwater management, irrigation facilities and utilities including water supply, wastewater treatment and disposal, telephone, television, power, gas and other public and private infrastructure.
- c. Cut and Fill Easements: Where a cut or fill area of a road is outside of the normal right-of-way or easement, a slope easement of sufficient width shall be required to allow maintenance of the cut or fill area.
- d. Off-Site Easements: Where access from a public road to the subdivision will cross other properties, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of this chapter and may also be required to participate in a road maintenance agreement. Such easements must be granted in perpetuity by each property owner in a signed and notarized document and be recorded prior to or concurrent with final plat filing.

- e. Easement Reference: The location of any road easements used to access the subdivision must be shown on the preliminary plat or on a supplemental map. The existence of easements providing legal access to the subdivision shall be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.
- f. Location: All subdivision roads shall be located within easements as opposed to stand-alone tracts of record.

6. Substandard Public Roads Leading to a Subdivision

- a. When a substandard publicly-maintained road(s) is used to access a subdivision, the governing body shall consider the two options below for improving the road(s) and choose the option that in its estimation is most likely to result in (A) improved safety and efficiency along the road(s) and (B) equitable distribution of the costs related to the extension of capital facilities. The most obvious travel route(s) due to convenience and destinations shall be used for determining traffic flows and counts.

- i. Option 1 (*generally for major subdivisions but may be applied to minors*):

Where a subdivision is accessed by a substandard publicly-maintained road(s), the subdivider may be required to contribute to the City an amount equal to the proportional share of the improvements necessary to bring said road(s) up to City road standards, or to a standard deemed acceptable by the governing body, over its relevant length.

The cost of improvements shall be determined by a consulting engineer hired by the subdivider in consultation with the City Engineer, who both shall identify the road deficiencies and estimate materials, labor and other cost items necessary to bring the road(s) to the determined standard. The subdivider's proportional cost shall be found by adding current Average Daily Traffic (ADT) figures from the road(s) to the projected ADT to be generated by the subdivision, then dividing the projected subdivision ADT by the total. (Please see the example below.) ADT shall be determined by the subdivider collecting traffic count data over a one week period, and may be required to be adjusted for seasonal fluctuations. Traffic count location(s) shall be determined by the City Engineer.

As determined by the governing body, the subdivider's funds will either (A) be deposited into an account held by the City of Polson for the road improvements and will be used only for improvements to the substandard road(s) or (B), the developer will use the funds to make the specified improvements to the substandard road(s) prior to final plat filing or under a public improvements agreement. Under either option, the subdivider and lot purchasers will not be made responsible for additional road and related improvement costs under a special improvement district within ten years of final plat filing. In the event the funds are deposited into an account for road improvements by the City but are not used for a period of ten years, the City will refund the subdivider's money upon written request.

Example	
Current ADT on Market Street	300
Projected ADT increase from subdivision	<u>+ 150</u>
Total current and projected ADT	450
150 ÷ 450 = .33. Therefore, the subdivider is responsible for 33% of the cost of bringing Market Street up to Polson's standards (or a standard deemed acceptable by the governing body).	

ii. Option 2 (*generally for minor subdivisions but may be applied to majors*):

Where a subdivision is accessed by a substandard publicly-maintained road(s), as a condition of preliminary plat approval the governing body may require the future lot owners to waive their right to protest the formation of a special improvement district related to access and drainage improvements that will benefit the future owners pursuant to the limitations of 76-3-608(7), MCA. A governing body may not require as a condition of approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

7. **Substandard Privately Maintained Roads.** Where a subdivision is accessed by a substandard privately-maintained road(s), the subdivider shall make all improvements that are necessary to bring that road(s) up to City standards over its relevant length to the subdivision and shall be required to enter into a maintenance agreement to ensure that the road is maintained over time.
8. **GPS of Roads and Physical Addresses.** Prior to final plat approval, the subdivider shall submit the appropriate fee and application to Lake County and have both the approach location and centerline of all subdivision roadways Global Positioning System located, named and incorporated into Lake County's enhanced 911 database. Physical addresses will be assigned by the City upon individual lot development.
9. **Alleys.** Alleys provide access to the side or rear of individual land parcels and are characterized by a narrow right-of-way.
 - a. Alley rights-of-way or easements shall be at least 20 feet wide with a minimum 14-foot driving surface in residential areas.

- b. Alley rights-of-way shall be 30 feet with a minimum 20-foot driving surface in mixed use, commercial and industrial areas.
- c. Alleys shall be constructed to the minimum standards required for local streets unless determined otherwise approved by the City Engineer.
- d. Alleys shall be aligned parallel to, or concentric with, the street property lines.
- e. Both ends of alleys shall be connected to streets or to other alleys unless specifically authorized as a part of an approved subdivision plan.
- f. Alleys may not be used to provide the primary access to a lot unless specifically approved by the governing body.

DD. Multi-Modal Traffic Impact Study Required

Where a subdivision is anticipated to generate 1000 or more ADT the subdivider shall submit along with the preliminary plat application a multi-modal traffic impact study to gauge the impacts of development on transportation facilities, safety and traffic flow. The administrator or City Engineer may also require a multi-modal traffic impact study based on conditions unique to an area or property (e.g., a school is located near a development that raises concerns for traffic conflicts). The projected ADT will be determined using: 1) the most current volume of the Institute of Traffic Engineers Trip Generation Manual, 2) National Cooperative Highway Research Program's *Multimodal Level of Service Analysis for Urban Streets: Users Guide*, 3) an equivalent source, or 4) actual traffic counts.

- 1. Preparation.** A professional engineer or transportation planner must prepare the traffic impact study.
- 2. Pre-study meeting.** The administrator may require the subdivider and traffic impact study preparer must meet with the subdivision administrator, either in person or via telephone, prior to performing the study to discuss the scope of the study in order to ensure the study will be sufficient for subdivision review.
- 3. Form and content.** The traffic impact study must be in written form along with supporting maps and other appropriate information. At a minimum, the report must include the following elements:
 - a. Purpose and goals;
 - b. A description of the site and the study area, which shall extend to the most logical collector or arterial road based on trip distribution patterns;
 - c. Existing traffic circulation conditions and patterns including road geometrics, traffic counts, trip distribution, significant land uses, crash data, intersection evaluations, roadway capacity, conditions of roads leading to the subdivision and other relevant information;

- d. Anticipated traffic circulation conditions and patterns including road geometrics, traffic counts, trip distribution, significant land uses, crash data, intersection evaluations, roadway capacity and other relevant information;
 - e. Anticipated effects of the subdivision on the existing road network; and
 - f. Recommendations and alternatives to alleviate the negative effects (if any) and maintain the existing level of service post development.
- 4. Consideration of study.** The recommendations within the traffic impact study shall be considered by the administrator, board, and governing body. If the recommendations are not followed, the findings of fact shall explain why.

EE. Blocks

- 1. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- 2. Unless impractical, block length must not be more than 1,600 feet.
- 3. Blocks must be wide enough to allow for two tiers of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the governing body approves a design consisting of irregularly shaped blocks indented by cul-de-sacs.

FF. Street / Road Naming and Addressing

- 1. All new streets and roads shall have names assigned by the City of Polson prior to final plat approval.
- 2. All new lots shall receive addresses assigned by the City of Polson prior to final plat approval.

GG. Mail Delivery

- 1. All subdivisions shall include a proposal for mail service that must be reviewed and approved by the local postmaster prior to final plat filing.
- 2. In cases where delivery to the subdivision is available, the subdivider may be required to provide an off-street mailbox facility in compliance with the standards established by the United States Postal Service.

HH. School Bus Service

1. All preliminary plat applications for residential development shall include a proposal for school bus service that must be reviewed and approved by the local school district administrator prior to final plat filing.

II. Irrigation Easements (where applicable).

1. Except as noted in subsection II.2, below, the subdivider shall establish within the subdivision irrigation ditch easements that:
 - a. Are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of ditches or pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriation water right or water use permit or an operation and maintenance assessment of an irrigation district or other private or public entity formed to provide for the use of the water on the subdivision lots;
 - b. Are a sufficient distance from the centerline of the ditch or buried conveyance line to allow for construction, repair, maintenance, and inspection of the ditch or line; and
 - c. Prohibit the placement of structures or the planting of vegetation other than grass within the ditch or buried conveyance line easement without the written permission of the ditch owner or the irrigation water users identified in a water use agreement or irrigation plan.
2. The subdivider need not establish irrigation easements as provided above if:
 - a. The average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
 - b. The water rights have been removed from the property, the property has been reclassified and the operation and maintenance assessment has been removed from the property, or the process has been initiated to either remove the water rights or reclassify the land and remove the operation and maintenance assessment, as the case may be, and;
 - c. The fact the water rights have been or will be removed or that the property has been reclassified and the operation and maintenance assessment has been or will be removed from the land is noted on the preliminary plat.
3. The subdivider shall show on the preliminary and final plat, and file and record with the county clerk and recorder, easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 20 feet is required on each side of the bank of an irrigation canal and/or ditch for maintenance purposes.

All subdivisions which contain Flathead Indian Irrigation Project (FIIP) infrastructure shall include a reference to the applicable Code of Federal Regulations, as well as the following language on the final plat: "The subdivider hereby dedicates easements of sufficient width to permit passage and use of equipment necessary for construction and proper operation and maintenance for all infrastructure pertinent to the FIIP's irrigation system, including but not limited to canals, laterals and other irrigation works."

JJ. Disposition of Water Rights and Irrigation Related Operation and Maintenance Assessments. The subdivider shall submit evidence with the final plat that the subdivider has:

1. Reserved all or a portion of the appropriated water rights or operation and maintenance assessments for the land classified as irrigated, transferred those water rights or operation and maintenance assessments to a single entity for use by landowners within the subdivision who have a legal right to use the water, and reserved and severed any remaining surface water rights or operation and maintenance assessments from the land;
2. Established, either prior to or concurrent with final plat filing, an irrigation plan and water use agreement administered through a single entity when the land to be subdivided is subject to a contract or interest or assessed operation and maintenance costs in a public or private entity formed to provide for the use of a water right or water on the subdivision lots. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
3. Reserved and severed all surface water rights or reclassified the land and severed all operation and maintenance assessments from the land proposed for subdivision.

KK. Irrigation Plan.

1. When irrigation water rights or operation and maintenance assessments are to be transferred to more than one lot within a subdivision, the subdivider shall design an irrigation delivery system. Note: this requirement may be waived by the administrator if a property has no legal access to irrigation water. An irrigation plan, as described in this section, shall be prepared and submitted along with the preliminary plat application. The irrigation plan shall only include irrigation related information. All improvements specified in the approved irrigation plan shall be installed prior to final plat filing unless bonded for under an approved subdivision improvements agreement.
2. The plan and support documentation shall be prepared by a person with a working knowledge of irrigation water delivery systems and approved by the governing body or its designated agents. In addition, the proposed plan shall be prepared in consultation with one or more of the following: Joint Board of Control, Montana Department of Natural Resources and Conservation, USDA Natural Resources Conservation Service or similar agency.
3. Prior to submitting the plan to the administrator and when the property is under the jurisdiction of the FIIP, the subdivider shall complete and submit to the FIIP or the Joint Management Entity (JME) a *Request for Comment on Land to be Subdivided* (or other form used by the FIIP or JME) a draft irrigation plan and supplementary information along with a review fee to be determined by the FIIP or JME. The reviewing authority shall have 30 days to review the plan. If the reviewing authority

does not respond within that period the subdivider may submit the preliminary plat application for review.

4. The subdivider shall modify the draft irrigation plan based on comments from the reviewing authority and submit the modified plan to the reviewing authority for a second review prior to or concurrent with submitting the modified plan with the preliminary plat application.
5. The subdivider shall submit all correspondence between herself/himself and the reviewing authority including but not limited to completed forms, plans, and attachments along with the preliminary plat application.
6. The plan shall be prepared according to the following format:
 - a. The page size shall be the same as required for a preliminary plat.
 - b. The plan shall be legible and show all of the required information.
 - c. The plan shall be prepared at the same scale as the preliminary plat.
7. The plan shall include the following elements:
 - a. The location of all existing and proposed diversion points, delivery points, ditches, pipes, pumps, heads and associated easements.
 - b. The means to share in the cost of operating, managing and maintaining those elements of the delivery system held in common, such as an irrigators association.
 - c. The specific irrigated area in the subdivision and on each lot.
 - d. The percentage of each lot that is proposed to be sprinkler irrigated and the percentage that is proposed to be flood irrigated.
 - e. A mechanism to collect wastewater (tailings) so as to not negatively impact any properties within and outside of the subdivision.
 - f. A mechanism to ensure that drainfields and homesites will be avoided.
 - g. A statement that all FIIP ditches may be maintained by personnel from FIIP.
 - h. Any lot resulting from the subdivision that is not an original FIIP tract must have a piped, pressurized system capable of sprinkler application of the irrigation water.
 - i. A statement from the FIIP that they will provide water to the designated delivery point.
8. Minimum Required Structural Setbacks
 - a. 50 feet from primary canals unless otherwise approved by FIIP.

b. 25 feet from all ditches, laterals and water lines.

9. The approved irrigation plan and all related information such as irrigation water users association documents shall be filed with the FIIP or other irrigation water management body as well as the Lake County Clerk & Recorder prior to or concurrent with the filing of the final plat.
10. Any major change in an approved irrigation plan, such as reclassification of the property to remove the operation and maintenance assessment, prior to final plat approval shall require a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body relied upon in making its decision on the subdivision.
11. When property is proposed to be reclassified to remove the operation and maintenance assessment as a component of the preliminary plat application, reclassification shall be accomplished prior to final plat approval and documentation of such shall be submitted along with the final plat application.

LL. Parks and Trails. The subdivision parkland dedication requirements and procedures are located in Chapter IV.S.

MM. Cluster Development. Please see Chapter IV.CC. for Cluster Development performance standards.

1. The preliminary plat application requirements and process located in Divisions 2, 3, and 4 of this chapter shall be utilized.
2. Cluster development subdivisions are exempt from the parkland dedication requirements of IV.S. and 76-3-621, MCA.

NN. Historical and Cultural Resources. The design and development of a subdivision must account for all historical and cultural resources. Unless found to be inapplicable by the administrator, each preliminary plat application shall include the following:

1. Affected areas. The application shall describe and locate on a plat overlay or site plan any known or suspected historic or cultural resources which may be affected by the proposed subdivision, including but not limited to paleontological or archeological sites, structures, or objects.
2. Protective Measures. The application shall describe any plans to protect such resources.
3. Narrative. The application shall discuss the impact of the proposed development on any historic features and the need for an inventory, study and/or preservation with the State Historic Preservation Office or Confederated Salish & Kootenai Tribes as appropriate. The subdivider shall provide a written statement outlining any recommendations of the SHPO or CSKT and addressing any plans for inventory, study and/or preservation and mitigation planned to overcome any potentially adverse impacts.

OO. Water Supply, Wastewater Treatment, Runoff/Stormwater Management and Solid Waste.

1. The subdivider shall provide, along with the preliminary plat application, the water supply, wastewater treatment, runoff/stormwater management and solid waste information specified in 76-3-622, MCA.

2. All subdivisions within the Polson City Limits shall be served by municipal water and wastewater facilities unless exempted.
3. The subdivider shall be responsible for designing, extending and/or installing all water supply, wastewater treatment, stormwater management and solid waste facilities in accordance with Chapter IV, Performance Standards, Chapter V, Required Improvements, the *City of Polson Standards for Design and Construction*, Montana Public Works Specification Standards and the requirements of the Montana Department of Environmental Quality.
4. All new utilities shall be placed underground in easements that are of sufficient location and width to provide free, unobstructed access in accordance with the *City of Polson Standards for Design and Construction*.

PP. Phasing of Final Plats. Notwithstanding the time periods for preliminary approval established in Chapter VI, Sections V and W, as the effective period of preliminary plat approval, an application for a subdivision plat/plan may include a phasing plan in which final plats/plans will be submitted in phases during a period of time that exceeds the standard three year effective period of a preliminary plat/plan; however, all final plats/plans shall be recorded pursuant to Section 1., Phasing Deadlines below.

1. Phasing Deadlines.

- a. Minor Subdivisions. All minor subdivision final plats shall be recorded within 5 years of approval of the subdivision.
- b. Major Subdivisions, 6 — 20 lots. All major subdivision final plats where the total number of lots is between 6 and 20 in the subdivision shall be recorded within 10 years of approval of the subdivision.
- c. Major Subdivisions, 21 — 49 lots. All major subdivision final plats where the total number of lots is between 21 and 49 in the subdivision shall be recorded within 15 years of approval of the subdivision.
- d. Major Subdivisions, 50 lots or greater. All major subdivision final plats where the total number of lots is 50 or greater in the subdivision shall be recorded within 25 years of approval of the subdivision.

2. Phasing Plan.

A phasing plan shall include the following:

- a. Map. A phasing map shall delineate each phase and designate specific lots and improvements included in each phase. The phasing map shall include the entire land area included in the preliminary plat/plan. When phasing is not indicated on the preliminary plat/plan, the final plat shall be submitted for the entire area shown on the preliminary plat/plan.
- b. Functionality. The phasing plan shall demonstrate that each phase of the subdivision will contain fully functional systems for access, non-motorized facilities, stormwater management, fire

suppression, potable water, wastewater, and other infrastructure and service delivery without reliance on a future or subsequent phase.

c. Schedule. The map shall include a legend that identifies the sequential order and the projected schedule for filing the final plat for each phase.

3. Criteria. The review and approval, approval with conditions, or denial of a phasing plan shall be based on the following criteria:

a. Comply with Regulations. The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall comply with these regulations;

b. Functional. The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall contain fully functional systems for all infrastructure and service delivery;

c. No Change. No significant changes in the general area of the subdivision are expected to occur within the time period of the phases that would change the evaluation of the preliminary plat/plan; and;

d. Facilities. The planning and provision of public facilities and services in the area of the subdivision will not be disrupted by the timing of the phases.

4. Modifications. If the subdivider proposes to establish a phasing plan after the preliminary plat/plan has been approved, a new preliminary plat/plan delineating the phases and establishing the phasing schedule shall be submitted to the governing body for review and approval. Modifications to previously approved phase boundaries or the schedule for filing the final plats also shall require the review and approval by the governing body.

5. Final Plats. Final plats for each phase shall be filed sequentially in accordance with the approved phasing plan.

CHAPTER VII - DEFINITIONS

A. What This Chapter Does. This chapter provides definitions for terms used in these regulations. Any dispute about the meaning of a term shall be resolved using the appeals procedure of III.Q.

B. Rules of Interpretation. Terms include both singular and plural forms; i.e., building includes buildings, and their derivatives; i.e., adjacent includes adjoining. The administrator is responsible for interpreting these regulations: See Chapter I.J and I.K.

C. Other Definitions. Certain sections of these regulations, including the performance standards for wireless communication facilities, and the RVZD zoning district, have definitions unique to those sections. Those definitions are intended to supplement the definitions in this chapter.

Access, Emergency, Legal and Physical.

1. Emergency access means an ingress and egress route with adequate legal and physical access as well as ongoing maintenance necessary to support emergency service providers and other vehicles during an emergency situation.
2. Legal access means each lot abuts a public (city, county, state or federal) street or road, or the developer has obtained adequate and appropriate easements across all necessary properties, from a public road to each lot, whether or not a road has been constructed on that property, and has or proposes to dedicate the easement for public use to the development.
3. Physical access means a street, road or alley conforming to the adopted design standards provides vehicular access from a public street or road to each lot in a development.

Accessory. Accessory uses and buildings are those customarily associated with and clearly subordinate to a permitted or special permit building or use. Common accessory uses (a parking lot associated with a business or a personal garden associated with a home, for example) and buildings (a detached garage in a residential area, for example) raise few questions, but this definition specifically addresses five specific accessory uses.

1. A single dwelling unit occupied by the owner, a manager, or a guard is a customary accessory use on all commercial and industrial premises.
2. An accessory apartment (an attached single, functionally separate dwelling unit) is a customary accessory use in all single-family dwellings unless a detached accessory dwelling unit is also located on the same lot.
3. A detached accessory dwelling unit (a single, functional dwelling unit physically separated from the primary dwelling unit on a lot), including an apartment above a detached garage, is considered an accessory residential use in some zoning districts in compliance with the district regulations (Chapter II) and performance standards (Chapter IV).
4. Family and group day-care homes serving up to 12 children and registered by the Montana Department of Family Services shall be customary accessory uses in all single-family dwellings, as provided by 76-2-

412, MCA. Day care shall also be considered customarily accessory to any commercial or industrial use that provides on-site day care for its employees. Day care centers in commercial or industrial zoning districts are commercial or industrial uses, subject to all applicable performance standards.

5. Certain other accessory uses and buildings are addressed in specific zoning districts. Home occupations are separately addressed: see IV.Z.

Adjacent. Adjacent includes all lots or parcels that directly border the lot or parcel on which a development is proposed, and all lots or parcels directly across from that lot or parcel separated only by a public or private easement or right-of-way, including streets, railroads, and irrigation canals.

Administrator. The City of Polson Building and Planning Official or designee or a contractor, who is responsible for the administration of these regulations. See I.K. and I.L.)

Affordable Housing. Housing where the occupant is paying no more than 30% of the median income for the county for gross housing costs including utility costs, rent or mortgage, taxes and insurance.

Agriculture. The use of land for growing, raising, or marketing of plants or animals to produce food, feed, and fiber commodities. Examples of agricultural activities include cultivation and tillage of soil; dairying; growing, and harvesting of agricultural or horticultural commodities; and the raising or tending of animals for commercial sale or use. Agriculture does not include gardening for personal use, keeping of house pets, or landscaping for aesthetic purposes. Agricultural land includes land currently used for agriculture or having a soil type defined by the Natural Resource Conservation Service as having agricultural importance.

Agricultural Water Users Facilities. Those facilities which provide water for agricultural land or which provide water for the production of agricultural product and include, but are not limited to, ditches, pipes, canals, and other water conveying facilities.

Arterial Street. See Street.

Attached. Two parts of a structure are attached when they are connected via a shared wall or floor/ceiling connection. The shared wall touches the interiors of both parts of the structure, not an external wall that only ties two buildings together.

Average Daily Traffic (ADT). The average number of vehicles crossing a specific point on a roadway during a 24-hour period on the average working day. The projected or estimated ADT for a subdivision or other development shall be based on the most representative land use(s) described in the manual entitled "Trip Generation" (latest edition) published by the Institute of Transportation Engineers, or a similar source.

Bed and Breakfast. A private, owner-occupied residence that is used as a private residence but in which:

1. Breakfast is served and is included in the charge for a guest room; and
2. The number of daily guests served does not exceed 18.

BOA. Acronym for the City of Polson Board of Adjustment, as authorized by 76-2-321, MCA. The BOA is an appointed body that hears variances, and appeals from decisions of the administrator and board.

Board. The Polson City-County Planning Board, appointed as authorized by 76-1-101, MCA, et seq.

BOCC. Acronym for the Lake County Board of County Commissioners, the county's chief elected officials.

Boulevard. A multi-lane road or street that has each unidirectional travel lane separated by a landscaped median.

Buffer. Two different kinds of buffers are required by these regulations. Chapter IV.C. requires a shoreline buffer, which is a structural setback designed to protect water quality and the natural characteristics of the land/water interface where only limited development and vegetation disturbance is allowed to occur. Chapter IV.W. requires landscaped buffers in some instances.

Building. As used in these regulations, refers to any structure intended for supporting any occupancy.

Building Height. The vertical distance from the average level of the highest and lowest point of the ground adjacent to the building foundation to the topmost point on the roof. The highest point does not include typical extensions above a roofline such as chimneys, vents and antennae.

Catastrophic Event. A natural or manmade incident which results in extraordinary levels of damage or disruption. This includes, but is not limited to, fire, explosion, flood, tornado, riot, act of public enemy or accident of any kind which destroys 50% or more of a structure.

Certificate of Compliance (Occupancy). A certificate of compliance or occupancy is issued upon the completion of a use or building and any accompanying improvements required by these regulations: See Chapter III.X.

CC. Acronym for the Polson City Commission, the elected governing body of the City of Polson.

Clear Vision Triangle. A triangular area on a lot or parcel in which objects that would block the vision of drivers at an intersection or driveway are prohibited

Cluster Development. A subdivision with lots clustered in a group of five or more that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

Collector Street. See Street.

Commercial. Enterprises involving wholesale trade, retail trade, professional services and personal services.

Community Garden. A plot of land that is gardened by a group of people to produce fruits, vegetables and/or flowers. This is distinct from an individual garden on a residential parcel. A community garden may be owned by a single person/entity or a group of people and may include composting for use on site and sales of products grown on site. A community garden does not include resident animals.

Community Residential Facility.

1. A community group home for developmentally, mentally, or severely disabled persons that does not provide skilled or intermediate nursing care;

2. a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth group home as defined in 52-2-602, MCA;
3. a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons;
4. a licensed adult foster family care home; or
5. an assisted living facility licensed under 50-5-227, MCA. (76-2-411, MCA).

Complete (application). An application is complete if it contains all of the applicable information required on the permit form and in these regulations.

Condominium. The ownership of single units with common elements located on property submitted to the provisions of the Unit Ownership Act (70-23-102 through 70-23-102, MCA). This term does not include a townhome or townhouse.

Day Care. As defined by 52-2-703(4), MCA, day care means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular or irregular basis, as applicable, for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours. Montana law defines three kinds of day care facilities.

1. A family day care home is a private residence in which day care is provided to three to six children on a regular basis. Montana law (76-2-412(4), MCA) requires that family day care homes be permitted in all residential zoning districts.
2. A group day care home is a private residence in which day care is provided to seven to 12 children on a regular basis.
3. A day care center is an out-of-home place in which day care is provided to 13 or more children on a regular or irregular basis.

Family and group day care homes are not home occupations, but a residential use of property, as provided in 76-2-412, MCA.

Dedication. The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

Density. The average number of residential, commercial or industrial units per acre.

Destroy. An act which permanently impairs or makes unusable the object of the act. A building is considered destroyed when 50% or more of the physical structure is damaged by fire, explosion, flood, tornado, riot, act of the public enemy or accident of any kind.

Development. Development is used as a generic term covering any and all activities for which a permit is required by these regulations. The developer is, by definition, the owner of the parcel on which a development

is proposed, but owners may appoint a representative for all proceedings by these regulations. A subdivider who is different from the owner may also be considered the developer.

Driveway, Single Use and Shared

1. **Single Use.** A private vehicular access, the use of which is limited to persons residing, employed, or otherwise using or visiting the parcel it accesses.
2. **Shared.** A vehicular access that serves up to two separate parcels.

Duplex. A structure containing two separate dwelling units, each of which has direct access to the outside. Also referred to as a two-family dwelling.

Dwelling Unit. A single living space providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Facade. That portion of a building fronting on and visible from a public street.

Finding of Fact. A written conclusion or determination, based on evidence, made in support of a decision.

Flood of 100 Year Frequency. A flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.

Fowl. Chickens, turkeys, ducks, guinea fowl, pigeons, and pheasants.

Frontage. The frontage of a lot or parcel is the distance, measured in lineal feet, along any property line/s that directly abuts a public street.

Governing Body. The Polson City Commission.

Growth Policy. The Polson Growth Policy.

Hazardous Materials. Includes all substances subject to regulation by the Emergency Planning and Community Right-To-Know Act.

Home Occupation. A commercial or light industrial activity conducted in a dwelling or a building accessory to a dwelling. See Chapter IV.Z.

Hospital Complex. One or more buildings, one of which must be a hospital (defined as an institution to provide medical and surgical care to the sick or injured, including operating room facilities and beds for overnight stay). May also include a cafeteria or restaurant, medically related heliports, nursing homes, extended care clinics, physical therapy and employee exercise facilities, shops for medical equipment and supplies, books, magazines, gifts and similar items.

Hotel/Motel. A building or a group of buildings containing five (5) or more individual sleeping rooms or suites, each having a private bathroom attached thereto, for the purpose of providing overnight lodging facilities to the general public for compensation with or without meals, and usually providing on site recreation services,

housekeeping, bellhop, laundry and related services. Where appropriately zoned, restaurant, bar, personal and retail services and entertainment may also be available.

Immediate Family. A spouse, children by blood or adoption, and parents.

Impervious Surface. Any hard surfaced, manmade area that does not readily absorb or retain water including but not limited to roofs, parking and driveway areas, graveled areas and sidewalks. Surfaces like gravel driveways and pervious pavers may be assessed for lot coverage based on relative impervious factor guidance provided by MDEQ or other credible source.

Industrial. Relating to, concerning, or arising from the assembling, fabrication, finishing, manufacturing, packaging, repair, dismantling, recycling, processing, storage, distribution and handling of goods and the materials from which they are produced. Industrial activity may result in noise, light, smoke, dust, glare, vibration and similar effects outside of a building.

Infill Development. Development or redevelopment designed to occupy scattered, vacant or underutilized parcels of land that remain after the majority of development has occurred in an area.

Large-Scale Development. A large-scale development is a project that will contain 100 or more residential lots or units, or is projected to generate 1000 or more ADT: See Chapter IV.T.

Light Industrial. A use engaged in the manufacture, predominately from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products. May also include research and development activities. Light industrial activities can generally control the external effects of the manufacturing process such as noise, light and smoke.

Livestock. Cattle, calves, horses, mules, sheep, lambs, and goats.

Local Services. All services provided by local governmental bodies and agencies for the benefit of citizens. These services include, but are not limited to, law enforcement, fire protection, water supply, recreation, transportation systems, parks, libraries, schools, electrical and telephone utilities and the collection and disposal of wastewater and solid waste.

Local Street. See Street.

Lot. Lot is used as both as a generic term for a development site, and to refer to any parcel of land created and described by a record of survey or plat.

Lot Coverage. Lot coverage is the percent of a lot or parcel that is covered by rooftops (including eaves and soffits), paving, and other surfaces that prevent direct infiltration of precipitation or runoff into the soil. Surfaces like gravel driveways and permeable pavers may be assessed for lot coverage based on relative imperviousness factor guidance provided by MDEQ or other credible sources. Slotted decks are not considered lot coverage where the ground under the deck is pervious.

Manufactured Home. See definition for single-family home, below.

Marina. A dock facility from which services are provided, such as, but not limited to, moorage sales or rental, marine sales and services, sales of fuel and other goods and sewage disposal. A distinction is made between marinas and common use docks. Marinas provide services to the general public and meet the needs of many lake users and common use docks only meet the needs of a homeowners association of limited size.

Material (as in a material change to an application or plat). Significant, substantially altering the proposal or having an impact on any of the primary review criteria, bringing the proposal out of conformance with the applicable growth policy, zoning or subdivision regulations, or impacting the public's opportunity to provide meaningful comment.

MCA. Acronym for Montana Code Annotated. The state laws of Montana.

MDEQ. Acronym for Montana Department of Environmental Quality.

Medical Offices. Those uses concerned with the diagnosis, treatment, and care of human beings. Such uses include, but are not limited, to doctor and dental services, clinics, out-patient surgery centers, imaging centers, physical therapy and psychiatric counseling. Medical offices also include medically related professional offices such as social services and medical administration.

Medical Support Services. Uses and facilities including, but not limited to, medical equipment storage and supply, pharmacies, and other facilities commonly associated with medical institutions.

Minor Utility Installation. Includes cable television, electric power, and telephone cables and transmission lines, water and sewer facilities, and natural gas pipelines that serve the area through which they are routed. Also includes transformer boxes and other minor appurtenances to those transmission lines or pipelines. Wireless communication facilities are not minor utility installations. Other utility installations are industrial uses.

Minimize. For the purposes of these regulations, "to minimize" means to demonstrate that no alternative plan for the proposed development will result in a smaller impact.

Mitigate. To eliminate or make the reasonably expected impacts of a land use less severe.

Mobile Home. Any structure manufactured in compliance with the National Manufactured Home Construction and Safety Standards Act (42 U.S.C. 5401, et seq., as amended) that is transportable in one or more sections, and which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. Mobile homes are not single-family dwellings: see definition below.

Mobile Home Park. Any lot or parcel used for occupancy by mobile homes that are not placed on permanent foundations. Mobile home parks are subdivisions.

Motor Home. A motor vehicle:

1. Designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

2. Containing permanently installed independent life support systems that meet the ANSI/A119.2 standard; and provides at least four of the following types of facilities:
 - a. Cooking, refrigeration or icebox
 - b. Self-contained toilet
 - c. Heating or air-conditioning or both
 - d. Potable water supply, including a faucet and sink; or
 - e. Separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply or both.

Multi-modal transportation. Various modes of transportation: walking, cycling, automobile, public transit, etc.

Multiple-family dwelling. A building designed for permanent occupancy by more than two families or households, which may include apartment or townhouse or condominium building(s).

MSPA. Acronym for Montana Subdivision and Platting Act, Title 76 Chapter 3, Montana Code Annotated

Natural Environment. The physical conditions which exist within a given area, including land, air, surface and groundwater, geology, soils, flora and fauna, and objects of historic, prehistoric, or aesthetic significance.

Nonconforming. A nonconforming use or building complied with the regulations that existed at the time of its development, but would not comply with these regulations, if submitted for approval after their effective date. The degree of nonconformity is the measured extent to which an existing building or use fails to comply with the standards of this ordinance. For example, the degree of nonconformity of a parking lot that has four spaces, but serves a use requiring nine, is five parking spaces. No change in the nonconforming use or building could be permitted that would reduce the number of parking spaces, because that would increase the degree of nonconformity.

Occupancy. The use of a building or lot. A minor change in occupancy is a change to any occupancy that has identical parking requirements, similar traffic generation potential, creates no additional signage, and has, as determined by the administrator, similar or lesser impacts on neighboring land uses.

Open Space. Land that is essentially unimproved and set aside, dedicated, designed or reserved for public or private use or enjoyment, or for the enjoyment of owners and occupants of land adjoining or neighboring such open space. This includes land that is intended to be preserved due to significant natural resources, wildlife habitat, viewsheds, irrigated or prime agricultural land and other similar features. This does not include land used for mineral extraction.

Outdoor Storage. Keeping, stockpiling, or storing materials for any reason (it need not be for commercial use), including the long term storage of construction materials and inoperative machinery or vehicles, that is not enclosed in a building and is visible from a public street.

Park and Recreation Area, Public and Private

1. Private park and recreation area means a tract of land and improvements presently owned or controlled and used by private entities or groups for active and/or passive recreational purposes.
2. Public park and recreation area means a natural or landscaped area that may include buildings, pathways or structures, provided by or dedicated to a unit of government, to meet the active or passive recreational needs of the people.

Person. Any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

Planned Unit Development. A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use (76-3-103 [10]).

Plat. A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

Public Health and Safety. A condition of optimal well-being, free from danger, risk or injury for a community at large, not merely for a specific individual or a small group of persons.

Recreational Vehicle. A recreational vehicle is a park model, motor home, travel trailer, truck camper, fifth wheel or camping trailer, with or without motorized power, designed for temporary recreational or emergency occupancy. Recreational vehicles are not mobile homes.

Recreational Vehicle Park. Any lot or parcel used for temporary occupancy by recreational vehicles. Recreational vehicle parks are reviewed as subdivisions.

Setback. The setback is the shortest distance between the property line and the outer wall, at grade, or any above grade extension that projects more than three feet from the outer wall at grade, of any building. The space within that distance is called a required setback.

1. The front setback is measured from the lot line paralleling the street on which the building is addressed to any building. Except where one of the bordering streets is an arterial or collector, corner lots shall treat the yard on the street on which the structure is addressed as "front". The yard on an arterial or collector shall, however, be the front yard, regardless of whether the structure is addressed on that street.
2. The rear setback is measured from the rear lot line to the any building. The rear lot line is parallel, or more or less parallel, to the street. Corner lots have two rear yards, but may treat either as a side yard for the purposes of these regulations.
3. The side setback is measured from the side lot line to any building.

Sewerage. Refers to the entire system (mains, treatment plant, etc.) used to treat sewage wastes.

Short Court. A private road serving 3 to 8 dwelling units, with the following characteristics: road right-of-ways of 40' width and with road lengths of 200' or less; concrete curbs and gutters; no sidewalks; and with plans for snow removal.

Sign. Any device, structure, fixture, enclosure, or placard using graphics, symbols, lighting, and/or written copy designed specifically for the purpose of advertising, identifying, or attracting attention to any establishment, product, goods, or services. This includes any/all portions of the sign structure not required for maintaining the

structural integrity or not part of an architectural embellishment of a building. Specific types of signs are defined in the sign ordinance.

Single-Family Dwelling. A detached building designed for occupancy by one family or household. Also includes community residential facilities, as required by 76-2-401, MCA, et seq. Also includes manufactured homes that: (1) comply with the National Manufactured Home Construction and Safety Standards Act (40 USC 5401, as amended) or the Uniform Building Code at the time of production; (2) are at least 1,000 square feet in size; (3) are attached to a permanent foundation and, where available, permanently connected to municipal utilities; (4) have a pitched roof, eaves and siding and roofing materials that are customarily used on site-built homes in the Polson Planning Area; and (5) are built offsite in a factory on or after January 1, 1990. (76-2-202, MCA). Recreational vehicles, mobile homes and travel trailers are not single family dwellings, and shall not be used as such.

Site Plan. A graphic depiction of a development that accompanies a permit application and includes information necessary to determine compliance with these regulations.

Slope. The degree of deviation of a surface from horizontal measured from the natural grade. For the purposes of these regulations, slope is expressed in percent and may be averaged across a specific, limited area or physical feature such as a road or segment of road, a building site, a lot or an entire subdivision depending on the context in which the term is used.

Streets, Arterial, Collector and Local

1. **Arterial.** A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. For the purposes of these regulations, Highway 93 and Highway 35 shall be considered arterials.
2. **Collector.** A road or street having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
3. **Local.** A road or street having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.

Structure. Any object constructed or installed, including, but not limited to, buildings, towers, smokestacks, earth formations, liquid storage tanks, fences, and overhead transmission lines. For the purposes of the Airport Safety Overlay District (Chapter II), includes mobile structures, like cranes.

Subdivision, First Minor, Subsequent Minor and Major.

1. **Subdivision.** As provided by 76-3-103(15), MCA, "a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a U.S. government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any re-subdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed."

2. **First Minor.** A proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the Montana Subdivision and Platting Act or has not resulted from a tract of record that has had more than five lots created from that tract of record under 76-3-201 or 76-3-207, MCA, since July 1, 1973.
3. **Subsequent Minor.** Any subdivision of five or fewer lots that is not a first minor subdivision.
4. **Major Subdivision.** A subdivision that creates six or more lots.

Sufficient (application). An application is sufficient if it contains an adequate level of detailed, supporting information to allow for thorough evaluation and review under these regulations.

Townhouse or Townhome. Property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

Travel Trailer. A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use and not used as a principal residence. The size or weight of the unit is such that it can be licensed for standard highway travel and as not to require special highway movement permit(s). The unit is designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted about or forward of the tow vehicle's rear axle.

Use. Synonymous with occupancy. See definition of occupancy above.

Variance. A variance is a modification of the specification or performance standards of these regulations that provides a reasonable use of lot or parcel that cannot otherwise be developed in compliance with these regulations. Specific findings are required for the approval of a variance. See III.Q.

Viewshed. A visually prominent area seen from a common public observation area(s). Visually prominent areas include skylines, ridgelines, bluffs, rock outcroppings, peaks and surface water. Common observation points include public roads, navigable waterways and public lands.

Wildlife. All birds, mammals, amphibians, reptiles and fish that are not domesticated or tamed.

Wildlife Habitat. Land and water that provides food and shelter for wildlife.

Yard. A general term meaning that portion of a lot located between a structure and a lot line. The yard may include a required setback area.

ADMINISTRATIVE MATERIALS

Application Forms

Sample Certificates

Approved Planting Materials