

ORDINANCE NO. 381

AN ORDINANCE AMENDING THE CODE OF THE CITY OF POLSON BY ADDING ANOTHER CHAPTER, (10) TO TITLE 6, AN ORDINANCE ADOPTING LAKESHORE PROTECTION REGULATIONS FOR THE CITY OF POLSON, MONTANA.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA:

WHEREAS, the legislature of the State of Montana has enacted the lakeshore protection act which act provides for issuance of permits for any work which will alter or diminish the course, current, or cross sectional area of a lake or its lakeshore; and

WHEREAS, the City Council of the City of Polson determines it in the best interests to exercise the authority delegated in said act and adopt regulations governing the issuance of said permits; and

WHEREAS, the City Council finds that an emergency exists because the County of Lake has heretofore adopted a similar resolution which is now effective and because work is being carried on within the City of Polson; and it is immediately necessary for the preservation of Flathead Lake and peace, health, and safety of the public of the City of Polson and therefore this is an emergency ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA:

CHAPTER 10

General Provisions

SECTION:

6-10-1(1): Title

These regulations shall be known and referred to as the "City of Polson Lakeshore Protection Regulations."

6-10-1(2): Authority

Local governing bodies are required by law to adopt regulations regarding the issuance or denial of permits for work in lakes including the land adjacent thereto within their jurisdiction by virtue of Title 89, Chapter 37, Sections 89-3701 through 89-3712, RCM, 1947, as amended.

6-10-1(3): Purpose

The purpose of these regulations is to: Conserve and protect Flathead Lake located in Lake County because of its high scenic and resource value; conserve and protect the value of lakeshore property; conserve and protect the value of the lake to the state's residents and visitors who use and enjoy it.

6-10-1(4): Jurisdiction

These regulations govern any work which will alter the character of Flathead Lake or its lakeshore, within the boundaries of the City of Polson, Montana. These regulations supplement all other regulations, and the permit issued hereunder does not supersede other permits as may be required by other persons having jurisdictional responsibilities on the lake or its lakeshore.

6-10-1(5): Severability

Where any word, phrase, clause, sentence, paragraph, section, or other part of these regulations is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid.

6-10-1(6): Interpretation

Where any provision of these regulations imposes more stringent regulations, requirements or limitations than imposed or required by any other regulation, resolution, ordinance or statute of the State of Montana, then the provisions of these regulations shall govern.

Definitions

Whenever the following words or phrases appear in this text, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural, the singular; the word "shall" is always mandatory, and the word "may" indicates the use of discretion in making decisions.

- 6-10-2(1): Applicant:
The person making application to the governing body for a permit.
- 6-10-2(2): Governing Body:
The Board of City Councilmen, City of Polson, Montana.
- 6-10-2(3): Lake:
A body of standing water, and the area within its lakeshore, occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area); having a water surface area of at least one hundred sixty (160) acres for at least (6) months in a year of average precipitation as such averages are determined by the United States Geological Survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats. The sole lake under this definition which falls within the jurisdiction of the City of Polson, Montana, is Flathead Lake.
- 6-10-2(4): Lakeshore:
The perimeter of a lake when the lake is at mean annual high water elevation, including the land within twenty (20) horizontal feet from that high water elevation. The lakeshore measurement is taken perpendicular to the perimeter of the lake and inland from the body of water.
- 6-10-2(5): Mean Annual High Water Elevation:
The mean average of the highest elevation of a lake in each of at least five (5) consecutive years, excluding any high levels caused by erratic or unusual weather or hydrologic conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high water elevation.
- 6-10-2(6): Permit:
A document issued by the governing body verifying compliance with the requirements and provisions of these regulations.
- 6-10-2(7): Person:
Any individual, firm, corporation, partnership, institution or entity; the state and its departments and any political subdivision of the state.
- 6-10-2(8): Planning Board:
The Polson City-County Planning Board as created under the provisions of Title 11, Chapter 38, RCM 1947, as amended.
- 6-10-2(9): Planning Staff:
The building inspector of the City of Polson, Montana.
- 6-10-2(10): Reconstruction:
To rebuild an existing facility by removing the existing structure, in whole or in part, and building a new structure, in whole or in part, which is identical to the replaced facility, in size, shape, bulk, character, location, and types of construction materials.

6-10-2(11): Repair Work:

To restore an existing facility to sound condition by replacing component parts of the facility.

General Provisions

6-10-3(1): General Requirements

(a) No person shall proceed with any construction work on or alteration or disturbance of a lake or its lakeshore, as mentioned in Section 3-4 of these regulations, until he has obtained a permit from the governing body.

(b) A person who performs construction work on, or who alters or disturbs a lake or its lakeshore, as mentioned in Section 3-4 of these regulations, after 3-20, 1978, without a valid permit for that work shall, if required by the governing body or the city court, restore the lake and the lakeshore to its condition before he disturbed it.

(c) The person who does the work is responsible for assuring that a permit has been issued by the governing body for the work.

(d) Work or development approved under these regulations shall not create a vested property right in the permitted development, other than in the physical structure, if any, so developed.

6-10-3(2): Permission to Enter

The governing body, planning board, or planning staff may conduct such investigations, examinations, and site evaluations as they deem necessary to verify information supplied as a requirement of these regulations. The owner of the land for which an application for a permit is filed shall grant the governing body, planning board, or planning staff permission to enter upon his land for these purposes.

6-10-3(3): Exemptions from Regulations

(a) Repair work is exempt from the provisions of these regulations provided that different types of material are not used for repair, the existing facility is not reconstructed, expanded, relocated, or changed in size, shape, character, or bulk, and the repair work will not maintain an existing condition that is in conflict with the Criteria for Issuance of a Permit (Section 6) when the existing facility could be easily modified to be in compliance with these criteria.

(b) Projects that are normal maintenance work for existing facilities and that the governing body determines have a minimal or insignificant environmental effects on the lake or its lakeshore may be exempt from the provisions of these regulations by the issuance of a letter from the governing body stating the character of the project and that a permit is not required; provided, however, that this exemption may be made null and void if at some future time the governing body determines that the project does have undesirable effects that violate the Criteria for Issuance of a Permit (Section 6 of these regulations).

6-10-3(4): Work Requiring a Permit

(a) Any person who proposes to do work which will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the governing body.

(b) Without limitations, the following activities, when conducted below the mean annual high water elevation, are examples of work for which a permit is required:

- (1) Construction of channels and ditches;
- (2) dredging of lake bottom areas to remove muck, silt, sediment, rock, or vegetation;
- (3) lagooning;
- (4) filling;
- (5) constructing breakwaters; and
- (6) constructing wharves, docks, and piers.

(c) Without limitations, the following activities, when conducted over the body of water or in the lakeshore area, are examples of work for which a permit is required:

- (1) Construction of channels and ditches;
- (2) construction of any facilities and/or their associate components which would discharge substance into the lake;
- (3) construction of homes, buildings, and all other major structures;
- (4) construction of any overhead or aerial structures, including boathouses;
- (5) construction of boat service facilities, and installation of gasoline pumps;
- (6) installation of floating docks;
- (7) installation of water, sewer or utility lines and facilities;
- (8) reconstruction of existing facilities; and
- (9) removal of vegetation.

6-10-3(5) Violations:

A person who violates an order issued under these regulations or who knowingly violates a provision of these regulations commits a misdemeanor and, on conviction, may be sentenced to thirty (30) days in the county jail, or fined five hundred dollars (\$500), or both. Fines collected under this section shall be paid to the general fund of the City of Polson for the purpose of administering these regulations.

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6-10-3(6) Judicial Review and Enforcement:

The city court may hear and decide the following cases arising under these regulations within the City of Polson:

- (a) A complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake;
- (b) A petition of an interested person for review of the final action of the governing body upon an application for a permit;
- (c) A petition of an interested person for review of an action of a governing body in adopting or amending regulations.

6-10-3(7) Amendment of Regulations:

These regulations may be amended from time to time. Prior to adopting any proposed amendments, the governing body shall hold a public hearing thereon. The governing body shall give notice of the time and place of the public hearing by publication in a newspaper of general circulation in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

Review Procedures

6-10-4(1) Application:

Any person who proposes any activity or work mentioned in Section 3-4 of these regulations shall submit an Application for a Shoreline Construction Permit together with an application fee of ten dollars (\$10) to the governing body.

6-10-4(2): Summary Review Procedures:

(a) The governing body, shall review the application to determine whether or not the proposed project will have a minimal or insignificant impact on the lake or its lakeshore. Where the governing body determines that a proposed project will have a minimal or insignificant impact on the lake or its lakeshore, they shall so state, and they shall issue a permit. When the governing body determines that a proposed project may have a significant impact on the lake or its lakeshore, they shall notify the applicant of such and require him to resubmit the application as specified in Section 4-3 of these regulations to the planning staff, or planning board if there is no professional staff under the board's direction.

(b) The governing body shall grant approval or conditional approval, or require planning board review of the proposed project within seven (7) days of receiving an application for a permit.

6-10-4(3): Planning Board Review Procedures:

(a) For any proposed project requiring review by the planning board, the applicant shall submit an application for a permit together with two (2) copies of such drawings, plans, specifications, and other supplementary materials as specified in Section 5 of these regulations to the planning staff, or the planning board if there is no staff under the board's direction, at least seven (7) days prior to the date of a regular meeting of the appropriate planning board.

(b) After receiving the application, drawings, plans and other supplementary materials, the planning staff shall review the same for compliance with these regulations and shall make a report to the planning board.

(c) The planning board shall review the report of the planning staff and the plans, drawings, and other material submitted and determine whether or not it conforms to criteria established for issuance of a permit. The planning board may require that the applicant submit additional information as may be necessary and reasonable to make a responsible decision.

(d) The planning board shall send a report and recommendation to the governing body as to whether or not the applicant of a proposed project conforms to the criteria contained in these regulations for issuance of a permit and whether or not the permit application is recommended for approval, conditional approval or denial.

(e) The governing body shall take no action granting or denying a permit application which has been presented to the planning board for review until it has received the recommendation of the planning board.

(f) After receiving the recommendation of the planning board, the governing body shall:

(1) Issue a permit, if the permit application conforms to the criteria for issuance of a permit; or

(2) issue a conditional permit and list the conditions for approval, if the permit application can be brought into conformance with the criteria for issuance of a permit through minor changes in design or plans; or

(3) deny issuance of a permit if the permit application does not conform to the criteria for issuance of a permit.

(g) Review of the permit application by the planning board and its approval, conditional approval, or denial shall take place within a ninety (90) day period unless the applicant agrees to an extension of the review period. Such ninety (90) day review period shall commence seven (7) days prior to a regular meeting of the planning board, provided all required information has been properly submitted.

6-10-4(4): Variances:

The governing body may grant a variance from these regulations only after preparing and distributing an environmental impact statement, at the expense of the applicant, which conforms to the requirements of Section 4-4 (a), and holding a public hearing as specified in Section 4-4 (b), of these regulations.

(a) The environmental impact statement shall contain the following information:

- (1) Description of the proposed project for which a permit application has been filed.
- (2) Description of the variance being considered by the governing body.
- (3) Description of existing conditions.
- (4) Description of, if any:
 - a) known environmental effects;
 - b) probable environmental effects;
 - c) any unavoidable adverse environmental effects.
- (5) Alternatives to, or modifications of the proposed project.

(b) After the governing body has prepared and distributed the environmental impact statement, they shall hold a public hearing; notice of the time and place of the hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing; the applicant shall be notified by mail of the time and place of the public hearing not less than fifteen days prior to the date of the hearing.

6-10-4(5): Shoreline Construction Permit:

The permit issued under the authority of these regulations is valid for one (1) calendar year from the date of issuance. The permit may be renewed if the applicant requests the governing body for an extension of time before the original permit expires and the governing body agrees to grant an extension of time.

Detailed Project Plans

6-10-5: The detailed project plans shall include the following information:

- (a) A site plan drawn approximately to scale showing the details of the proposed project;
- (b) A descriptive essay that describes the proposed project, the existing conditions, and the probable environmental effects of the project. Any measures taken to minimize potential or unavoidable adverse environmental effects should be identified and discussed.

Criteria for Issuance of a Permit

6-10-6:

(a) The proposed action shall not, during either its construction or its utilization:

- (1) Diminish water quality;
- (2) diminish habitat for fish or wildlife;
- (3) interfere with navigation or other lawful recreation;
- (4) create a public nuisance;
- (5) create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and
- (6) significantly alter the characteristics of the shoreline.

(b) The proposed action shall meet the following criteria in order to be in compliance with Montana's policy of nondegradation of existing high water quality as described in Section 69-4808.2, RCM, 1947.

- (1) The proposed action shall not directly or indirectly cause increased sedimentation in the lake during either its construction or utilization.
- (2) The proposed action shall not directly or indirectly cause increased discharge of nutrients or toxic substances into the lake during either its construction or utilization.

(c) The proposed action shall meet other necessary and reasonable requirements of the governing body as may be identified in the review process and specified as conditions for granting approval in order to protect and promote the public health, safety, and welfare.

REPEALING CLAUSE: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

EMERGENCY: A public emergency is hereby declared to exist and this Ordinance is hereby declared to be necessary for the immediate preservation of public peace, health, and safety, and therefore this Ordinance shall be in full force and effect, from and after its passage and approval.

PASSED AND APPROVED this 20th day of March, 1978.

CITY OF POLSON

By: A. Dean Greiner
Mayor

ATTEST:

Barbara L. Love
City Clerk