

June 8, 2010

The Red Lodge City Council met in regular session on June 8, 2010 at 7:00 p.m. The meeting was called to order by Acting Mayor Mahan followed by the Pledge of Allegiance to the Flag.

ROLL CALL OF OFFICERS Present: Acting Mayor Mahan, Aldermen Kampfe, Richter, Labrie, Kennicott and Priest. Absent: Mayor Roat.

MINUTES OF MAY 25 Motion by Kampfe, second by Labrie to approve the minutes of May 25 as submitted. On roll call vote all Aldermen present voted "Aye". Motion carried.

CLAIMS AGAINST THE CITY Motion by Kampfe, second by Labrie that claims against the City totaling \$161,600.45, approved by the Auditing Committee, be paid and warrants drawn on their respective funds in payment. On roll call vote all Aldermen present voted "Aye." Motion carried.

Kampfe reported on some of the claims that will be paid at this time. Post Frame Specialists was paid \$24,955 for a 30x40x14 building being installed at the cemetery. The largest claim this month was paid to Sundance Solar in the amount of \$41,060 for the solar array panel project being put in at the wastewater treatment plant. A claim totaling \$2,741 was paid to Fast Track Acoustics for ceiling tiles being installed at the Library. This remodeling project is being done with special funds that were received this year from the County.

OFFICERS REPORTS The officer's reports were presented to the Council for their review.

COMMENTS FROM PUBLIC None

SPECIAL COMMITTEES – None

Administration – NorthWestern Energy Lighting Over Charges Lawsuit Acting Mayor Mahan changed the lineup of the agenda by moving the NorthWestern Energy topic to the top of the agenda as Mr. Doty has other commitments he needs to attend to. Mr. Doty said that Red Lodge is being overcharged approximately \$7000 to \$12,000 per year by NorthWestern Energy on 53 to 199 of its streetlights that were installed prior to 1988. He said the overcharge has resulted because of an "ownership charge" levied by NorthWestern Energy that more than covers the original cost depreciated of the streetlights and supporting poles. When the cost is covered, the "ownership charge" should cease if regulators are properly monitoring rates.

Doty told the Council that three taxpayers petitioned the Montana PSC to eliminate an estimated annual \$2.1 million in street lighting overcharges in NorthWestern's area and recoup millions more in accumulated overcharges. The PSC dismissed the petition on the theory that petitioners lacked standing to bring the complaint because they are just taxpayers who only have an "indirect" interest in paying street light bills. Cities or Counties who pay the bill would have standing according to PSC. Therefore, the original petitioners are asking Red Lodge to join their suit. The legal work is being provided pro bono by attorney, Russ Doty. Petitioners also wanted the money saved to be used to replace existing outmoded streetlights with luminaries containing energy efficient LEDs. Doty showed the Council some slides on using LED lights. The money to pay for the new luminaries would come from elimination of the overcharge plus the 50% reduction in energy costs accruing from replacement of technologically outmoded lights.

Kampfe asked if any other municipalities or counties have signed onto this lawsuit and was told that Doty had not approached any other municipalities. Mahan asked Doty if this is an assignment that the PSC should

be handling why is he asking the City to do the work. Doty said that in order for the PSC to do this task they have to have it placed before them properly. They have to have someone build the record.

Motion by Kampfe, second by Richter that the City of Red Lodge enter into an agreement with Russ Doty, an attorney, to petition NorthWestern Energy for overcharges since 1988. Kampfe withdrew his motion. Motion by Kampfe, second by Richter to table this matter until the June 22, 2010 Council meeting. On roll call vote all Aldermen present voted "Aye." Motion carried.

Priest asked Doty if this process was not actually set in two parts. There is the idea of someone with standing getting the hearing with PSC and also the issue of what would happen with the proceeds. Doty said that Priest is correct. He said he tried to figure out a way for municipalities, who are strapped for funds, to find a way to start installing LED lights. He said if they kept the same budgeting for the overcharge for a few years this would enable the communities to start this project and when this was accomplished funds would then be coming in and helping the community.

Kennicott wondered if there would be any risks for the City to be a co-petitioner. She asked if this should go first to the City Attorney and perhaps to the City Engineer. Labrie and Richter also felt it was a good idea to first consult the City Attorney.

Kampfe said he did not feel he has enough information about the proposed lawsuit to make a decision at this time. His fear is that it will cause the City staff and Council a lot of work and effort to get everything in place to move forward and wondered how successful it will be with the information available at the present time.

It was decided to send this information to the City Attorney and all questions from the Council can be directed to Mr. Doty for answers.

Ordinance #884 – Restrictions on Use of Tobacco – Parks and Public Lands – 2nd Reading

ORDINANCE #884 (caption)

AN ORDINANCE OF THE CITY OF RED LODGE RESTRICTING TOBACCO USE IN CITY PARKS AND RECREATIONAL FACILITIES.

Motion by Kampfe, second by Kennicott to approve Ordinance No. 884, An Ordinance of the City of Red Lodge Restricting Tobacco Use in City Parks and Recreational Facilities, on second reading. On roll call vote all Aldermen present voted "Aye." Motion carried.

Ordinance #885 – Amendments to Animal Control Ordinance – 2nd Reading

ORDINANCE NO. 885

THIS IS AN ORDINANCE TO AMEND PORTIONS OF TITLE 5 POLICE REGULATIONS, CHAPTER 5 ANIMAL CONTROL, ARTICLE B CONCERNING DOGS AND TO REMOVE ANY REFERENCES TO THE AMOUNTS OF FEES AND FINES FOR CHAPTER 5 IN THE RED LODGE CITY CODE.

Motion by Kampfe, second by Labrie to approve Ordinance #885, an ordinance to set fines for animal control on first reading. On roll call vote all Aldermen present voted "Aye." Motion carried.

Tom Kuntz pointed out that Section A stated: "Required: It shall be unlawful to have a dog within the corporate limits of the city unless the dog is licensed as herein required." He said the term "have" may be too broad a terminology as it could subject someone who is only passing through Red Lodge or a tourist to the ordinance. Kuntz suggested changing this section to read: "It shall be unlawful for a resident of Red Lodge to have a dog within the corporate limits of the city unless the dog is licensed as herein required."

Motion to amend by Kampfe, second by Labrie to say “resident of Red Lodge” in Section A. On roll call vote all Aldermen present voted “Aye.” Motion carried.

The main motion went back to first reading due to the amendment that was made to the ordinance.

Review Pledged Securities The City Clerk gave the Council a copy of the pledged securities from First Interstate Bank, Bank of Red Lodge and Wells Fargo. These pledged securities show that funds deposited in the banks are safe.

Motion by Kampfe, second by Labrie to acknowledge the pledged securities with the Wells Fargo, First Interstate Bank and the Bank of Red Lodge. On roll call vote all Aldermen present voted “Aye.” Motion carried.

Resolution #3310 – Budgetary Authority – Fish, Wildlife and Parks - \$10,000

BUDGETERY AUTHORITY RESOLUTION

RESOLUTION NO. 3310

WHEREAS, the City of Red Lodge received grant funds from Fish, Wildlife and Parks in the amount of \$10,000 for FY 2010 for use in putting bear resistant trashcans on Broadway from the Living With Wildlife program; and

WHEREAS, cities may appropriate federal or state money received during the fiscal year by formal resolution.

NOW THEREFORE BE IT RESOLVED that the City Council hereby appropriates the sum of \$10,000 and directs the City Clerk to allocate said amount to the following programs and objects.

<u>Revenue Code</u>		<u>Amount</u>
4030-334125	FWP	\$10,000
<u>Expenditure Code</u>	<u>Object of Expense</u>	<u>Amount</u>
4030-411000-300	Contracted Services	\$10,000

Motion by Kampfe, second by Kennicott to approve the Budgetary Authority Resolution #3310. On roll call vote all Aldermen present voted “Aye.” Motion carried.

Police and Emergency Services – Ordinance #883 – Speed Limit on Airport Road – 2nd Reading

ORDINANCE NO. 883 (caption)

THIS ORDINANCE IS FOR THE PURPOSE OF CHANGING THE SPEED LIMIT ON AIRPORT ROAD NORTH FROM 25-MILES PER HOUR (MPH) TO 35-MILES PER HOUR (MPH).

Motion by Kennicott, second by Kampfe to approve Ordinance #883, for the purpose of changing the speed limit on Airport Road North from 25-miles per hour (mph) to 35-miles per hour (mph), on second reading. On roll call vote those in favor: Aldermen Kampfe, Richter, Labrie and Kennicott. Those opposed: Aldermen Mahan and Priest. Motion carried.

Beth Hutchinson asked if the Council was taking the new airport trail into consideration with regard to this ordinance. Kampfe told her the Council did consider the trail and that the shortest distance from the trail edge to the road would be twelve feet. Priest said he is not in favor of this speed change as the trail will not be plowed in the winter but people will still be walking even in the winter months and they will then be on the road. Hutchinson feels this particular road is used differently and she feels the increased speed is not a good idea.

Resolution #3307 – Road Naming Airport Road, White Ave., Remington Ranch Road

RESOLUTION NO. 3307

RED LODGE CITY COUNCIL

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF RED LODGE TO ASSIGN THE NAMES AIRPORT ROAD SOUTH AND AIRPORT ROAD NORTH.

WHEREAS, Ordinance No. 874 of the City Council of the City of Red Lodge authorizes the City Council to name streets and avenues in the best interest of the City and inhabitants thereof; and

WHEREAS, the street currently known as Airport Road intersects with a road that is signed Remington Ranch Road which is the name of a street already existing as the main entrance road into the Remington Ranch Subdivision; and

WHEREAS, this duplication in street names has the potential for confusing an emergency services response; and

WHEREAS, the Fire Department is charged with city addressing and has recommended abandoning the current signage in order to rename this expanse of road to Airport Road North and Airport Road South with the division beginning at the entrance to the Airport.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Red Lodge, Montana to adopt Resolution No. 3307 designating this public right of way as Airport Road North and Airport Road South.

Motion by Kennicott, second by Kampfe to approved Resolution #3307, to assign the names for Airport Road South and Airport Road North. On roll call vote those in favor: Aldermen Kampfe, Richter, Labrie, Kennicott and Priest. Those opposed: Alderman Mahan. Motion carried.

Tom Kuntz told the Council that Airport Road has never been officially platted or named as far as anyone can tell. He said in all official aspects, such as the 911 database, Airport Road South is being used and not Remington Ranch Road which is how the road is currently signed.

Interlocal Agreement for Workers' Compensation Tom Kuntz explained to the Council that all employers are required to have Workers' Compensation on their employees. For the employee the compensation covers lost wages and medical expenses. The benefit for the employer is that the employee waives their ability to sue the employer as a result of the injury. Kuntz said that Workers' Compensation for volunteers only covers a lost wage of \$150 per quarter. This is the amount that the City is required to claim per volunteer per quarter. This then leads to why Kuntz feels it is important to have a supplemental insurance also. Currently the Rural Fire District has the supplemental insurance program and the City has the Workers' Compensation. It has become increasingly hard to determine who is fighting what type of fire whether it is rural or City in regard to the volunteers. It is beneficial to the volunteers to have a single coverage.

Motion by Kennicott, second by Richter to approve the Interlocal Agreement providing for the cooperative provision of Workers' Compensation and Supplemental Insurance by the City of Red Lodge and Red Lodge Rural Fire District #7. On roll call vote all Aldermen present voted "Aye." Motion carried.

Interlocal Agreement Search & Rescue Motion by Kennicott, second by Labrie to approve the Interlocal Agreement entered into by the Carbon County Sheriff's Office, City of Red Lodge Fire Department and Red Lodge Rural Fire District #7 to provide search and rescue. On roll call vote all Aldermen present voted "Aye." Motion carried.

Kuntz told the Council that this agreement is between the City and the County and has been approved by the County. The purpose of this agreement is to jointly provide search and rescue services. The City has staff that has the ability to help manage search and rescue as an organization and to respond to search and rescue, as a response need. The City has typically been doing this as we have the resources and training to do so. The City has been doing this for quite some time. This agreement will provide for the Sheriff's Office to

budget \$8500 for the Red Lodge Fire Department, which will cover four hours of weekly staff time and up to 100 hours of mission time.

Lease Agreement – Red Lodge Fire/EMS with Fire District #7 Kuntz told the Council that the current lease agreement with Red Lodge Rural Fire District #7 will end June 30. This agreement will need to be updated and renewed but there have been no problems with the agreement in the past ten years. The current agreement allows for a \$1200 per month lease payment and the amount that will be asked for in the new agreement is \$1400 per month. The new agreement term of ten years will be July 2010 to June 2020. This agreement will come back to the Council as an action item at the next Council meeting.

Kennicott brought up the subject of the Council's intentions in providing ambulance service outside the City limits if the ambulance district fails. She feels everyone needs to be aware of the Council's intentions if this ballot issue fails. Decisions need to be made on the level of service to be provided and to give an explanation of what will be done by the City. The County would also need to know of these decisions. The Council agreed that this is an important issue and the decisions need to be made and relayed. This will come back as an agenda item at the next Council meeting.

Hydrants on 19th Street Mahan asked Kuntz about the fire hydrants on 19th Street. She was told that they are not functioning. Kuntz said there are four hydrants on 19th Street that are not working. There are also others in town that are not working. He said there are approximately ten hydrants that are currently out of service as the hydrant itself is broken. Kuntz said he will visit with the Public Works Director to see what can and will be done to get these hydrants functioning.

Land Use and Planning – Ordinance #871 Amended – Use of City Owned Land – 2nd Reading

ORDINANCE NO. 871 AMENDED (caption)

AN ORDINANCE TO AMEND PREVIOUSLY APPROVED CITY ORDINANCE NO. 871 TO CLARIFY THE PROCESS AND REGULATIONS FOR THE USE OF CITY-OWNED PROPERTY WITHIN THE CITY OF RED LODGE.

Motion by Labrie, second by Kampfe to approve Ordinance #871, to amend previously approved City ordinance #871 to clarify the process and regulations for the use of City owned property within the City of Red Lodge on second reading. On roll call vote all Aldermen present voted "Aye." Motion carried.

Mahan said this ordinance will lift the restriction on using the five feet of sidewalk area in front of businesses during the Beartooth Rally and the Fourth of July. She said the Council strongly believes that the business owners know whether their property is in danger by this sidewalk use and if something goes wrong they will be responsible. Tom Kuntz said that his concern is in regard to the business owner leasing or renting the area in front of their business and the person leasing not being as careful as the owner would be. This is his concern with lifting the restriction for these two very busy times during the summer.

Class III and PUD – Review St. John's Cottage at the Willows Sanderson told the Council that St. Johns Lutheran Ministry has applied for a Class II Design Review and a Class III Condition Use Permit and a PUD review on Lot 32 Amended, Country Club Estates by the Beartooth Hospital that is under construction. These items will go to a public hearing with the Planning Board on June 9 and the Class III Conditional Use and the PUD Review will come back to the Council with a recommendation from the Board at the June 22 Council meeting. The Class II Design Review will be decided upon at the Planning Board meeting tomorrow evening with the Board sitting as the Zoning Commission.

Public Works – R-O-W Dedication on Diamond C Links Parkland Sanderson said that with the Diamond C Links Subdivision a 5.53 parkland area was dedicated to the City. This parkland sits in a semi land locked state at the present time. In keeping with the law the Parks Board has reviewed the request to

situate Hauser Avenue on a portion of this dedicated parkland. The Parks Board met and on a vote of 4-2 they made the recommendation to the Council of the approval of the dedication to use a portion of the land for Hauser Ave. The Council, as the governing body, now needs to take the Parks Board recommendation and decide if they want to make a dedication of a portion of the parkland for the R-O-W.

Motion by Priest, second by Richter to approve the right-of-way dedication on Diamond C Links parkland. On roll call vote those in favor: Aldermen Kampfe, Mahan, Richter, Labrie and Kennicott. Those opposed: Alderman Priest. Motion carried.

Sanderson spoke to what would be the real impact to the park. He said the impact that is not advantageous to the park is the 12-foot moving lane that will carry traffic and is located in the 30-foot wide right of way. There will be a 8-foot wide parking lane that will provide an area for people who want to use the park to leave their vehicles. This parking lane is a benefit for the parkland. There will also be a sidewalk and the open space parkland.

R-O-W Dedication on Hauser Ave and ¾ Access Limitations – Highway 212 at Beartooth Hospital
Sanderson talked of one of the important tenants of the proposed Right-of-Way Agreement. He said this is who pays for the extension of Hauser Ave. He said that any time an exaction is imposed the City is posing a restriction that is based on the regulations and the exaction has to be commensurate with the level of impact to a legitimate public need. Section 4 of this agreement says the City will follow the standard complying process of exactions or takings from developers as they move through this area. Developers may come to the Council to negotiate this point as they see fit.

Sanderson told the Council what needs to occur if the Council accepts this Right-of-Way Agreement. First they must accept the agreement as given. Sanderson said it is important for developers to see that the City is willing to put a portion of the right-of-way on publicly owned land as a way to reinforce the importance of Hauser Ave. in the north corridor. The next thing that needs to happen is to authorize the Mayor to accept the right-of-way designation as shown on the amended plat of Lots 31, 32, 33 and 29 amended and allow him to issue a record of decision that will lift the restrictions of the ¾ access to Highway 212 as given by Resolution No. 3223 and 3228. The reason the restrictions need to be lifted on this portion is because it will be the northern terminus of Hauser Ave. All movement needs to be executed from this terminus. The third thing that needs to happen this evening is to eliminate condition number 9 as imposed by the Council on Staff Report RLCU-08-03 and authorize the Mayor to serve notice on the hospital that condition number 9 has been eliminated. This condition speaks to the ¾ access onto Highway 212. Sanderson said that if the City is willing to lift this condition MDT is willing to work with the hospital to make this a full access.

Sanderson said another very important tenant of the agreement is what happens if the City determines down the road that we cannot get to Hauser Ave. and the City chooses to no longer keep the right-of-way. The second tenant speaks to the City entertaining a petition to vacate the right-of-way pursuant to MCA 7-14-4114, or such similar statute as may be in effect. If this were to happen the land would go back to the adjoining owners. This tenant would guarantee that the dedicated parkland would revert back to the City and the Parks Board and not slip into other ownership.

Priest said he feels the agreement needs a term and he also spoke to having a venue for lawsuits to be adjudicated. Sanderson said that would be the Twenty-Second Judicial District in Carbon County. Sanderson said originally the term was 2025 but it was struck in agreement with the hospital as a term sets a time when the City will have to complete Hauser Ave. It could be hard for the City to comply with the term limit so Sanderson recommends it be left out of the agreement.

Motion by Labrie, second by Richter to approve the Right-of-Way Agreement between the Memorial Hospital Association, St. John's Lutheran Ministries Inc. and the City of Red Lodge. On roll call vote all Aldermen present voted "Aye." Motion carried.

Amendment to motion by Labrie, second by Richter to establish the venue for lawsuits to be heard at the Twenty-Second Judicial District in Carbon County. On roll call vote all Aldermen present voted "Aye." Motion carried.

Motion by Labrie, second by Richter to accept the right-of-way dedication of Hauser Avenue as shown on the attached Exhibit #1. Further I move to repeal those portions of Resolutions #3223 and #3228 that limit the access on the hospital property at the boundary between Lots 31AM and 32AM to 3/4 , and authorize the Mayor to execute a record of decision that will be provided to the Montana Department of Transportation and the Memorial Hospital Association allowing full access to Highway 212 at the northern terminus of Hauser Avenue. On roll call vote all Aldermen present voted "Aye." Motion carried.

Motion by Labrie, second by Richter to amend the conditions of approval for RLCU-08-03 to eliminate condition #9 related to Resolutions #3223 and #3228, 3/4 access to Highway 212. On roll call vote all Aldermen present voted "Aye." Motion carried.

Landfill Agreement – City of Billings The only change in the new agreement from the previous year is the cost of the landfill charges.

Motion by Richter, second by Kampfe to accept the Landfill Agreement between the City of Red Lodge and the City of Billings for the 2010-2011 fiscal year. On roll call vote all Aldermen present voted "Aye." Motion carried.

Mahan said the solar panel array project at the wastewater treatment plant is moving along very well. She said that Boyer is working on getting more gravel to the recycling center. The pool should be opened within the next week.

Sanderson told the Council that he has contacted any businesses that have a dumpster that encroaches on City property in the alleys. Letters have been sent and some of the businesses have already corrected the problem or indicated that they will in the near future.

CITIZEN REPORT Peter Christ told the Council that he has concerns with the potential growth of Hauser Ave. as it goes down the northern corridor. He said he has trouble with the way this development and extension will be handled. He also said he hopes the City will bring the extension plans out to the public so they will see what will be happening. He does not feel the process has been public enough. He feels it is being done in a piecemeal manner.

Beth Hutchinson said she feels the extension of Hauser will probably be a good thing but she too feels that people are not being made aware of what will be happening. She said the public needs to be informed better and thought that the City could do a weekly happening in the paper so maybe people would be better prepared for any events that are upcoming.

CORRESPONDENCE Sanderson said he attended a meeting with MDT on the alignment grade and the location of Highway 212. He said the tentative start date is post 2014 for Red Lodge North.

Sanderson said that since HUD funds were used on the construction of Mountain Springs Villa, Mr. & Mrs. Brewer are required to be served notice of their rights under the Voluntary Acquisition and Relocation Act administered by HUD. Sanderson said he generated a letter that has been sent to all the players advising the

Brewers of their rights under federal law and we will see what their response is in terms of desiring compensation for the Hauser right of way. This step needs to be taken.

Meeting adjourned at 9:55 p.m.

Mayor

ATTEST:

City Clerk