

September 27, 2011

The Red Lodge City Council met in regular session on September 27, 2011 at 7:00 p.m. The meeting was called to order by Mayor Roat followed by the Pledge of Allegiance to the Flag.

**ROLL CALL OF OFFICERS** Present: Mayor Roat, Aldermen Kampfe, Mahan, Richter, Labrie, Schoenike and Williams. Absent: None.

**DEPARTMENT HEAD ATTENDANCE:** Community Development Director – Forrest Sanderson and City Clerk – Debbie Tomicich.

**MINUTES OF SEPTEMBER 27** Motion by Mahan, second by Schoenike to approve the minutes of September 27 as submitted. On roll call vote all Aldermen present voted “Aye.” Motion carried.

**COMMENTS FROM PUBLIC REGARDING AGENDA ITEMS** None

**SPECIAL COMMITTEES** None

**STANDING COMMITTEES – ADMINISTRATION – Ordinance #893 – Use of City Owned Land – 2<sup>nd</sup> Reading**

### **ORDINANCE # 893**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA ADOPTING REGULATIONS TO CLARIFY THE PROCESS AND REGULATIONS FOR THE USE OF CITY-OWNED PROPERTY WITHIN THE CITY OF RED LODGE, MONTANA.**

Motion by Labrie, second by Kampfe to approve Ordinance#893, Use of City Owned Property in the City of Red Lodge, on second reading. On roll call vote all Aldermen present voted “Aye.” Motion carried.

Williams asked if sponsors of events that apply yearly will be notified of the new forty-five day in advance period of application submittal. The newspaper said they would publish this for the citizens of Red Lodge. Sanderson also said he would draft a letter of explanation and send it to the traditional applicants explaining the changes.

**TBID District Creation** Motion by Kampfe, second by Labrie to accept the TBID petition, put a resolution of intent to create the TBID District on the October 11 agenda, publish public notices on October 20<sup>th</sup> and 27<sup>th</sup> and set the public hearing for 6:00 p.m. on November 8, 2011. On roll call vote all Aldermen present voted “Aye.” Motion carried.

### **Resolution #3333 – Federal Wage Certification – TIGER 3 Grant RESOLUTION # 3333**

#### **Federal Wage Rate Requirement**

The **City of Red Lodge Montana**, as an applicant for federal ARRA TIGER-3 funding certifies that they will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal Wage Rate Requirement (Federal wage rate requirements), as required by the FY 2011 Appropriations Act.)

*Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors **on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act** shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. (Emphasis added.)*

The effect of the ARRA language was to limit the imposition of federal labor law requirements of Subchapter IV, Chapter 31, Title 40 on a going forward basis, to included funds used in combination with the appropriated funds, but not retroactively. The problem that has been created by the difference in the language from ARRA and PL111-88 is EPA has interpreted the FY 2010 appropriation as follows:

*Application of the Davis-Bacon Act requirements extend not only to assistance agreements funded with Fiscal Year 2010 appropriations, but to all assistance agreements executed on or after October 30, 2009 and prior to October 1, 2010, whether the source of the funding is prior year's appropriation, state match, bond proceeds, interest earnings, principal repayments, or any other source of funding so long as the project is financed by an SRF assistance agreement. If a project began construction prior to October 30, 2009, but is financed or refinanced through an assistance agreement executed on or after October 30, 2009 and prior to October 1, 2010, Davis-Bacon Act requirements will apply to all construction that occurs on or after October 30, 2009, through completion of construction (see EPA November 30, 2009 Memorandum.)*

The **City of Red Lodge, Montana**, certifies to this provision within its annual Certification and Assurances to the Federal Transit Administration.

Motion by Williams, second by Labrie for the approval of Resolution #3333, the federal wage rate requirement. On roll call vote all Aldermen present voted "Aye". Motion carried.

**TIGER-3 Pre-application to USDOT** Motion by Kampfe, second by Williams that the City of Red Lodge submits the TIGER-3 Grant pre-application to USDOT. On roll call vote all Aldermen present voted "Aye." Motion carried.

Sanderson said all the pre-application materials have been gathered and submittal will be done tomorrow, September 28, 2011. This will be done a few days before the pre-application deadline. The full application will then be due the end of October 2011.

Mahan thanked Sanderson for the work that he has done on this TIGER-3 Grant application.

**Creation of a Citywide Lighting District** Mayor Roat said a lot of communities have districts for such things as fire hydrants or street lights. Red Lodge has never formed any districts for these types of things. He said a lighting district may be a method of saving money in the General Fund where street lights are currently housed. He commented that there is a lot of work involved in starting a lighting district. Sanderson said the reason this bothers him is with the Highway 212 North being done the City will be taking over the O&M on all the new decorative street lights in this corridor. The City will also be inheriting all the high pressure sodium lamps that will extend out to Two Mile Bridge Road.

Mayor Roat said he would like to provide the information, such as the statutes involved with the creation of a lighting district, to the Council so they can be thinking about whether or not this would be a good route to go. The Mayor also feels there are lights that need to be added to our existing system.

Kampfe said he feels the Council needs to listen to the public and gather opinions on what the public feels they want regarding the street lights. Maybe the public would rather not have as many as are currently installed and being used. He said there are very different opinions out there on this topic.

**POLICE AND EMERGENCY SERVICES** None

**LAND USE AND PLANNING – Ordinance #889-A – Zoning Map Amendment C-3 – Public Hearing/1<sup>st</sup> Reading and Ordinance #889-B – Zoning Text Amendment Noise – Public Hearing/1<sup>st</sup> Reading** Mayor Roat opened the public hearing for Ordinance #889-A, Zoning Map Amendment C-3. Sanderson combined Ordinance #889-A and #889-B for the purpose of the staff report. Sanderson said that for both ordinances, the Council has met the burden of proof and the low test that is required by Montana State law, 1) to change the zoning from R2 to C3 and 2) to edit the text of the zoning to deal with noise. This ended Sanderson’s staff report. There were no comments made so the Mayor closed the public hearing.

Mayor Roat opened the public hearing on Ordinance #889-B. There were no comments made from the public. Williams asked how the City would enforce the noise ordinance and what kind of training and equipment would be used to enforce the ordinance. Sanderson said the Police Department currently has a decimeter that was acquired about three years ago. The way the ordinance is written the City does not have to go through any special training nor do we have to purchase any special equipment. Sanderson said this is a serious tool but that hopefully noise will be able to be controlled first without issuing tickets.

**ORDINANCE #889-A**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA, ADOPTING REVISIONS TO OFFICIAL ZONING MAP #7 THAT ARE A PART OF THE RED LODGE ZONING REGULATIONS. THE CHANGE IS NECESSARY TO CORRECT AN ERROR IN THE ZONING ASSIGNMENT FOR FOUR (4) COMMERCIAL PROPERTIES ADJACENT TO HIGHWAY 212 THE CITY OF RED LODGE, MONTANA.**

**WHEREAS:** 76-2-301 et. Seq. of the Montana Code Annotated authorizes the City of Red Lodge to adopt and enforce local zoning regulation to promote the public health, safety, morals or the general welfare of the community; and

**WHEREAS:** The provisions of Montana Law allow municipal government to regulate and restrict certain land uses within the City Limits; and

**WHEREAS:** It is in the public and private interest for the City of Red Lodge to establish land use patterns that are consistent with the historic pattern of land uses, to group together like and consistent uses thereby limiting the adverse effects of noise and incompatible development on persons; businesses, the value of land and buildings while remaining respectful of location and use; and

**WHEREAS:** The Red Lodge City Charter provides for the exercise of self-government powers; and

**WHEREAS:** The Red Lodge Planning Board and Zoning Commission prepared Zoning Regulations and a Zoning Map for the City of Red Lodge; and

**WHEREAS:** The Red Lodge City Council following a public hearing and two separate readings of Ordinance #889, did on November 9, 2010 adopt said Ordinance creating the “Red Lodge Zoning Regulations, Effective December 10, 2010”; and

**WHEREAS:** The Planning Board and Zoning Commission did on September 14, 2011 conduct a public hearing on the proposed zoning map amendment; and

**WHEREAS:** The Planning Board and Zoning Commission on a 6-0 roll call vote recommends that the City Council adopt by ordinance the proposed amendment to Official Zoning Map No. 7 for the City of Red Lodge, Montana; and

**WHEREAS:** The Red Lodge City Council did conduct a duly noticed Public Hearing on September 27, 2011 on the proposed amendment to Official Zoning Map No. 7 and the Zoning Regulations for the City of Red Lodge, Montana.

**NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA:**

- I. Official Zoning Map No. 7 is hereby amended in those parts set forth in Exhibit 'A'.
- II. That the amended zoning map shall be designated "Official Zoning Map Number 7.1".
- III. "All existing ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed on the effective date of this ordinance."

Motion by Labrie, second by Schoenike to approve Ordinance #889-A, Zoning Map Amendment, on first reading. On roll call vote all Aldermen present voted "Aye." Motion carried.

#### **ORDINANCE #889-B**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA ADOPTING REGULATIONS AS A PART OF THE RED LODGE ZONING REGULATIONS FOR THE CONTROL OF NOISE; ESTABLISHING MAXIMUM NOISE LEVELS, THE LOCATION WHERE AND HOW NOISE SHALL BE MEASURED AND EXEMPTIONS FOR SPECIFIC ACTIVITIES WITHIN THE CITY OF RED LODGE, MONTANA.**

**WHEREAS:** 76-2-301 et. Seq. of the Montana Code Annotated authorizes the City of Red Lodge to adopt and enforce local zoning regulation to promote the public health, safety, morals, or the general welfare of the community; and

**WHEREAS:** The provisions of Montana Law allow municipal governments to regulate and restrict noise sources, their duration and frequency of occurrence; and

**WHEREAS:** It is in the public and private interest for the City of Red Lodge to establish noise controls that limit the adverse effects of noise on persons; businesses, the value of land and buildings while remaining respectful of location and use; and

**WHEREAS:** The Red Lodge City Charter provides for the exercise of self-government powers; and

**WHEREAS:** The Red Lodge Planning Board and Zoning Commission prepared Zoning Regulations and a Zoning Map for the City of Red Lodge; and

**WHEREAS:** The Red Lodge City Council following a public hearing and two separate readings of Ordinance #889, did on November 9, 2010 adopt said Ordinance creating the "Red Lodge Zoning Regulations, Effective December 10, 2010"; and

**WHEREAS:** The Planning Board and Zoning Commission did on September 14, 2011 conduct a public hearing on the proposed regulations; and

**WHEREAS:** The Planning Board and Zoning Commission on a 6-0 roll call vote recommends that the City Council adopt by ordinance the proposed amendment to the Zoning Regulations for the City of Red Lodge, Montana; and

**WHEREAS:** The Red Lodge City Council did conduct a duly noticed Public Hearing on September 27, 2011 on the proposed amendment to the Zoning Regulations.

**NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA:**

The Red Lodge City Code is hereby amended in those parts set forth below to read as follows:

Title 12 Chapter 4 Section 5 Subsection of the Red Lodge Municipal Code (Red Lodge Zoning Regulations) shall be amended to incorporate the following:

Be It Ordained By The City Council Members Of The City of Red Lodge, Montana.

1. "4.5.106" Noise
  - A. Noise Levels: Developments and land uses shall not create noises that exceed the levels established in Table 4.5.106.

TABLE 4.5.106

Zoning District in Which the Sound is Generated	Maximum Sound Level	Quiet Hours Unless Exempted by 4.5.106 B
R-1, R-2	65 dBA	Reduce to 55 dBA from 10:00 p.m. to 6:00 a.m.
R-3, R-4, C-1	70 dBA	Reduce to 60 dBA from 10:00 p.m. to 6:00 a.m.
C-2, C-3	80 dBA	Reduce to 70 dBA from 12:00 a.m. to 7:00 a.m.
C-4	85 dBA	Reduce to 75 dBA from 12:00 a.m. to 7:00 a.m.
P-1, P-2	80 dBA	Reduce to 70 dBA from 10:00 p.m. to 6:00 a.m.

B. Exceptions: Notwithstanding the noise limitations established in Table 4.5.106, exceptions to this Subsection are:

1. During all hours the following items are exempt: Emergency vehicle safety and warning signals, other safety and warning signals and devices, aircraft operations at the airport and hospital, vehicles with legal and properly functioning exhaust systems, those noise generators that in the opinion of the zoning administrator or law enforcement personnel meet the intent of this section, and limited temporary noises that occur for five (5) minutes or less.
2. During non-quiet hours the following items are exempt: home appliances, chain saws, lawn mowers and snow blowers in private use, those noise generators that in the opinion of the zoning administrator or law enforcement personnel meet the intent of this section, and limited temporary noises that occur for fifteen (15) minutes or less.
3. The City Council may grant waivers for special events (parades, street dances, grand openings, 4<sup>th</sup> of July celebrations, etc.) or via the Conditional Use Permit or Use of City Owned Lands approval process. All such waivers shall be in writing and on the property where the exemption is applicable.
4. "Quiet Hours" for construction activities regardless of the underlying zoning shall be from 10:00 p.m. to 7:00 a.m. Construction activities that are conducted outside of "Quiet Hours" and have a City issued building permit are exempt from the Maximum Sound Level for any given district.

C. Measurement: Noise levels shall be measured at the property line of the development or land use generating the noise and shall be measured with a sound level meter.

II. "All existing ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed on the effective date of this ordinance."

Motion by Labrie, second by Kampfe to approve Ordinance #889-B, Zoning Text Amendment for Noise, on first reading. On roll call vote all Aldermen present voted "Aye." Motion carried.

Mahan said she would like to offer an amendment to the motion. She said it has come to her attention recently that there is nothing in the zoning that speaks to flags and how they may be flown and if one is flown at night then it should be lighted. There are a number of flags in the City that are lighted and fly at night both in the residential and commercial districts. Most of these flags have been grandfathered in but there is one at the Bank of Red Lodge that they would like to light and fly at night. Mahan said she looked at the zoning and said the City needs to make it clear that the U.S. flag may fly at night as long as it is lit. The zoning speaks to the lighting so that is where the concern comes in.

Amendment by Mahan, second by Richter that at the recommendation of the Planning Board on RLZT-11-1 to include the following “that section 4-5-73-lighting exemption be amended to include item F. that shall read “F. United States Flag. Up cast light or other unshielded lights necessary to comply with United States code in Title 4, Chapter 1, Section 6. On roll call vote all Aldermen present voted “Aye.” Motion carried.

Mayor Roat asked the public if they had any comments on this amendment and no one spoke. Schoenike said the Planning Board had a very good discussion on the noise ordinance and he thanked the Board for all their hard work.

**PUBLIC WORKS – CTEP/SAFEROUTES Sidewalk** Sanderson said there are still a few minor items that need to be taken care of by the contractor but the project, as he said, is 99.99% completed. The City has approximately \$7800 for the 5% retainage that will be held to insure completion of the few outstanding minor problems. These funds will be held for the one year warranty. He said all in all a good project and well received.

**Steel Sculpture in Lions Club Park** Bill Cooper, a resident in Red Lodge, has done a steel sculpture that hopefully will be placed in Lions Club Park and should probably remain there for about one year. This sculpture is 10 feet tall, 10 inches wide and 5 inches thick. Lions Club is very receptive to having the sculpture and it will be placed by the Arts Guild. The name of the sculpture is “Material Witness”. The Council said they would be very pleased to have the sculpture placed in the park.

**CITIZEN REPORT** Jenn Nelson thanked the Police Department for taking action on some people that set off “fireworks” by her house that had the potential of causing damage. She is pleased that there will be consequences for these actions.

Jenn Nelson also said she has had dealings with Majestic Roofing, a company doing business in Red Lodge, and she has found them to be untruthful. She said if anyone asked she would be happy to speak to the issues she has. Mayor Roat told the Council that he has instructed the Building Inspector that if any company has two places that have not been finaled out and they are finished, that he is not to give them another permit until compliance is done.

**CORRESPONDENCE** None

**MISCELLANEOUS** Kampfe told the Council that the Airport Board met last Thursday, September 22. He said the Board is trying to clean up the airport area. There is a lease violation that the Airport Board has sent a letter on stating they will be terminating the lease.

Labrie said the Parks Board held a tree conference that brought approximately 140 people to Red Lodge. A free talk was held during the conference that was mostly specific to Red Lodge trees. The Board had weed spraying done on City land close to the golf course on the bench by trails that have been done.

Patty Davis thanked the Mayor, Mahan and Richter for attending a meeting regarding the snowplowing of Beartooth Pass. She said it was a very informative meeting. Davis said only one roofing company responded to do the work on the Chamber building. A contract will be signed with Sprague Roofing to do the work and the Chamber thanked the City for helping to get the roof done.

Kampfe told the Council that he will be out of the country from October 12 to November 5 so he will miss the October 25<sup>th</sup> meeting.

Motion by Mahan, second by Schoenike to approve the absence of Alderman Kampfe. On voice vote all Aldermen voted "Aye." Motion carried.

Meeting adjourned at 8:10 p.m.

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Mayor

ATTEST:

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