

ORDINANCE NO. 901

THE FOLLOWING IS AN ORDINANCE REPLACING CHAPTER 4 OF TITLE 2 OF THE RED LODGE MUNICIPAL CODE, INCLUDING ORDINANCES NO. 832, 833, 833 FIRST AMENDED, 833 SECOND AMENDED, 833 THIRD AMENDED, 833 FOURTH AMENDED, 833 FIFTH AMENDED, 834 AND 879 OF THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA, ADMINISTRATIVE ORDINANCES GOVERNING THE COLLECTION AND REPORTING OF RESORT TAX REVENUES.

WHEREAS, on November 4, 1997, the voters of the City of Red Lodge approved the Resort Tax, which had been submitted to the voters pursuant to Resolution 3075 of the City Council of the City of Red Lodge; and

WHEREAS, the Resort Tax, as approved by the voters, took effect on January 1, 1998; and

WHEREAS, 2013 Montana Code Annotated (MCA), and in particular MCA 7-6-1505 requires that the City Council enact an administrative ordinance governing the collection and reporting of Resort Tax revenues; and

WHEREAS, pursuant to MCA 7-6-1505(2), (3) and (4), the City is authorized to, from time to time, amend its administrative ordinance to effectively administer the Resort Tax ordinance and to further clarify and specify in the categories of goods and services that are subject to the Resort Tax, consistent with MCA 7-5-1503; and

WHEREAS, the City Council has amended the Administrative Ordinance governing the collection and reporting of Resort Tax revenues seven times and added Ordinance 901; and

WHEREAS the City Council and the Resort Tax Review Committee of 2013 deem it necessary to clarify the administration, collection and reporting of Resort Tax revenues in a single Resort Tax Administrative Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA, as follows:

Section 1: The City Council hereby adopts a new Chapter 4 of Title 2, to be called the "Resort Tax Administrative Ordinance" as an amendment to the Red Lodge Municipal Code, as set forth below:

Chapter 4
RESORT TAX

2-4-1 SHORT TITLE

2-4-2 DEFINITIONS

2-4-3: RESORT TAX IMPOSED:

2-4-4: LUXURIES TAX:

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2-4-7: AUDITS:

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2-4-10: QUESTIONS AND INTERPRETATION:

2-4-11: APPEALS:

2-4-12: RESORT TAX COMMITTEE:

2-4-13: BONDING REQUIRED:

2-4-14: VIOLATION; PENALTY:

2-4-1 Short Title.

These regulations shall be known and cited as the RESORT TAX ADMINISTRATIVE ORDINANCE.

2-4-2 Definitions.

LUXURIES, MEDICAL SUPPLIES AND MEDICINE: Defined as set forth in Montana code 7-6-1501, and further in section 2-4-3 of this chapter.

RESORT TAX AND TAX: The Resort Tax passed by the electorate of the City and as enacted by this chapter.

CAPITAL IMPROVEMENTS: Property or equipment with a life expectancy of five (5) years or more and that costs an excess of five thousand (\$5000) and include the salary or portion of an employee's salary when he/she is performing labor or services that will constitute an improvement or benefit to the City property.

2-4-3: RESORT TAX IMPOSED:

- A. Tax Imposed: Pursuant to the election held on November 4, 1997, there is imposed a Resort Tax on the retail value of all goods and services sold, except for goods and services sold for resale, within the City by the following establishments:
1. Hotels, motels and other lodging or camping facilities;
 2. Restaurants, fast food stores and other food service establishments;
 3. Taverns, bars, nightclubs, lounges and other public establishments that serve beer, wine, liquor or other alcoholic beverages by the drink;
 4. Destination ski resorts and other destination recreational facilities;
 5. Establishments that sell luxuries shall collect a tax on such luxuries.
- B. Rate Of Tax:
1. The exact rate of the Resort Tax is three percent (3%).
 2. The duration of the Resort Tax is twenty five (25) years from its effective date, said effective date being January 1, 1998, and will expire December 31, 2022.

C. Duty Of Collection: It is the duty of each operator of any of the establishments mentioned in this chapter to collect, upon sale, the tax herein imposed.

2-4-4: LUXURIES TAX:

Each business or organization subject to the tax shall collect the same on the retail value of all goods and services sold, except goods and services sold for resale, within the City by the establishments set forth in subsection 2-4-3A of this chapter. All luxuries shall be taxed, and "luxuries" shall mean any gift item, luxury item or other item normally sold to the public or to transient visitors or tourists; but the term does not include food purchased unprepared or not served, medicine, medical supplies and services, appliances, hardware supplies and tools or any necessities of life. The term luxuries shall be defined to include:

- Destination Ski Resorts And Other Destination Recreational Facilities:
 - All goods and services
 - Ski lift tickets and packages
- Hotels, Motels And Other Lodging Or Camping Facilities:
 - All goods and services sold
 - Conference, convention or event room or space rentals
 - Lodging based on rental periods of less than thirty (30) days
- Lodging for which the state bed tax is payable:
 - Bed and breakfasts
 - Campgrounds and RV parks
 - Condominium rentals
 - Hotels and motels
- Luxuries:
 - Attractions:
 - ❖ All goods and services sold by any business that does not operate more than ninety (90) consecutive days within a calendar year ("Temporary Vendor") within the City of Red Lodge
 - ❖ Arcades
 - ❖ Bowling Centers
 - ❖ Concerts with exception of not for profit fund raising events
 - ❖ Movie/Theater Tickets and all concessions
 - ❖ Event and entertainment tickets and cover charges with exception of tickets for not for profits fund raising events
 - ❖ Rodeo tickets
 - Golf courses:
 - ❖ Cart rentals
 - ❖ Green fees
 - ❖ Memberships
 - ❖ Merchandise sales
- Rentals:
 - Automobiles, trucks, trailers, RVs, etc.
 - Conference, convention or event room or space rentals
 - Golf equipment, ski equipment, snowboard, snowshoe and other sports equipment
 - Motorcycles, bicycles, ATVs, etc.
 - Records, tapes, CDs, videos, DVDs and Video Games etc.
 - Snowmobiles, boats, jet skis, etc.

- Retail sales of goods (excluding sales for resale) of:
 - New clothing items that have been either screen-printed, embroidered, or otherwise imprinted with designs depicting or containing words such as Montana, Red Lodge, Carbon County, Yellowstone Park, Beartooth Mountains, Beartooth Highway or any combination thereof.
 - Curios, decorative boxes, decorative vases
 - Cut flowers and floral arrangements, both living and nonliving
 - Artificial trees and plants
 - Fireworks
 - Jewelry and art
 - Pictures and picture frames, posters, prints, handcrafted cards
 - Records, tapes, CDs, videos, DVDs and Video Games etc.
 - Souvenir items
- Sporting goods (EXCEPT FIREARMS) including sold as used or on consignment, except when sold at a garage sale: (ski/gear swap is exempt)
- Nonfood items:
 - Batteries and film
 - Magazines and greeting cards including boxes of cards
 - Makeup and makeup bags, lint brushes, cosmetics, tanning lotions
 - Perfume, cologne
 - All Tobacco, nicotine, nicotine delivery devices and other tobacco related products. (i.e. matches, lighters, lighter fluid, etc.) Excluding FDA approved nicotine replacement therapy
 - New toys (including puzzles, card, and board games)
- Food Items
 - All Deli and bakery items with exception of loaves of bread, sliced meats and cheeses.
 - Foodstuffs intended for immediate human consumption
 - Single cans and bottles of beverages including soda pop, energy drinks, noncarbonated drinks, sports drinks and fitness drinks less than 2 liters (except milk and water).
 - Gum and candy, including individual, bulk, and packaged quantities
- Recreational Services including Tours, Guides and Outfitters:
 - Recreational services
 - Taxidermist
- Restaurants, Fast Food And Other Food Service Establishments:
 - All goods and services sold, including delivery charges, but not tips
 - Fraternal organizations when providing food and beverages or renting their facilities to the public and nonmembers
- Taverns, Bars, Nightclubs, Lounges And Other Public Establishments Serving Beer, Wine, Liquor Or Other Alcoholic Beverages:
 - All alcoholic beverages, including beer and wine, sold by the drink or at retail
 - All goods and services sold
- Liquor stores, all retail items sold
- Retail stores, all alcoholic beverages, including beer and wine, sold by the drink or at retail

2-4-5: PAYMENT OF TAX:

A. Remittance:

1. The taxes collected by businesses in any month are to be remitted to the city on or before the TWENTIETH (20) day of the following months: January, April, July, and October, unless such day falls on a Saturday, Sunday or holiday, then on the next business day. Failure to report or remit taxes by due date shall result in an audit of the business Resort Tax reporting records in addition to penalties imposed under Section 2-4-15 of this ordinance.
2. For good cause shown in a written request of a taxpayer who would pay less than five dollars (\$5.00) a month, the Mayor may extend the time for making returns and paying tax due.

B. Collection Duties And Responsibilities:

1. The officer responsible for receiving and accounting for the Resort Tax receipts is the City Clerk.
2. The Mayor and his/her agents shall be responsible for enforcing the collection of the Resort Tax and shall be responsible for overseeing the methods and procedures to be used in enforcing the collection of the Resort Tax. The Mayor shall be entitled to use all lawful methods and procedures in enforcing the collection of Resort Taxes, including, but not limited to, random audits and correspondence demanding prompt payment, civil suits, initiating criminal prosecution and revocation of City business licenses.

C. Administrative Fee: Each collecting merchant shall be entitled to withhold five percent (5%) of the Resort Tax collected to defray its cost for the administration of the tax collection. The administration fee may be withheld by the business at the time of remitting the tax to the City. Failure to withhold the fee shall constitute the waiver and forfeiture of the same.

2-4-6: RECORDS AND TAX FORMS:

A. Forms; Confidentiality: The City shall provide each business in the City responsible for tax collection with the proper forms for reporting and remittance to the City. Remittance to the City of the Resort Tax shall be tabulated and accounted for on forms prescribed and furnished to the business by the City. The records and forms held by the City shall be confidential, and shall not be open to inspection by the public unless so ordered by the City Council or a court of competent jurisdiction.

B. Preservation Of Records: Every business required to collect and remit the Resort Tax shall keep and preserve for a period of not less than three (3) years all records necessary to determine the verity of the taxes collected and remitted and shall make the same available for audit or inspection by the City at all reasonable times.

2-4-7: AUDITS:

Periodic random audits shall be conducted under the direction of the Mayor or his/her designated representatives. Entities shall maintain records sufficient to validate compliance with this chapter. All entities shall cooperate in all respects in the conduct of the audits. Failure to cooperate shall constitute a violation of the provisions of this chapter

2-4-8: USE OF TAX MONIES:

The tax monies derived from the Resort Tax may be appropriated by the City Council only for those activities, in those proportions, set forth below:

- A. Property tax reduction for taxpayers of the City in an amount equal to fifteen percent (15%) of the Resort Tax revenues derived during the preceding fiscal year;
- B. The merchants' and vendors' cost of collecting the Resort Tax in an amount equal to five percent (5%) per year (as provided in Section 2-4-6 of this Ordinance);
- C. Cost of administering the Resort Tax in an amount equal to one percent (1%) per year (as provided in subsection 2-4-6(C) of this chapter);
- D. All remaining tax revenue collected must be utilized for capital improvements to streets, alleys, roads, the municipal water system, the municipal sewer system, parks and recreational facilities, or emergency services.

2-4-9: PROPERTY TAX RELIEF FUND:

In the event the City receives more Resort Tax revenues than had been included in the annual municipal budget, it shall establish a municipal property tax relief fund, and all Resort Tax revenues received in excess of the budget amount must be placed in the fund. The entire fund must be used to replace municipal property taxes in the ensuing fiscal year.

2-4-10: QUESTIONS AND INTERPRETATION:

The Mayor and his/her agents shall be responsible for answering questions regarding those goods and services that are subject to the Resort Tax, and for interpreting the terms of this chapter. All questions shall be submitted to the Mayor in writing and shall be answered in 30 working days or less.

In order to provide consistency, the Mayor and his/her agents shall maintain a written file of all questions and interpretations rendered. The Mayor, in his/her discretion, may seek advice and/or guidance from the City Attorney or the City Council. The Mayor shall provide copies of all questions and interpretations rendered to the City Council. All interpretations rendered by the Mayor will be effective as long as this Ordinance is in effect.

2-4-11: APPEALS:

Any business may appeal to the City Council any assessment of penalty or interest; provided that notice of appeal in writing is filed with the City Clerk within thirty (30) days of the serving or mailing of the determination of the

amount of penalty and interest due. The City Council shall, at the next regular City Council meeting, fix the time and place for hearing the appeal and the City Clerk shall cause notice in writing to be personally served by a peace officer upon the operator. The findings and decision of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed for service of notice of hearing or by certified mail directed to the business operator's last known address. Any amount found to be due shall be immediately payable upon service of the findings and decision.

2-4-12: RESORT TAX COMMITTEE:

Each January for the first five years of the tax and every five years thereafter, the City Council shall appoint a five-member committee consisting of registered voters with representatives from Red Lodge, non-retail businesses, retail businesses, residents and City government. Not more than one (1) member of the committee may be a non-resident of the City. The committee shall review the Resort Tax administrative ordinance for the purpose of reviewing the list of included and exempted goods and services as defined in the administrative ordinance, and to propose any amendments to the then existing list. Such changes may be made by the City Council by passage of an amended administrative ordinance, pursuant to MCA 7-6-1505.

2-4-13: BONDING REQUIRED:

- A. Every entity, subject to the Resort Tax, that applies for a City business registration must provide a bond in the amount of Five Hundred Dollars (\$500.00) payable to the City to ensure its compliance with the City's Resort Tax. The bond shall be issued by a surety company licensed to conduct business within the State of Montana. Alternatively, any entity may post \$500.00 cash or a \$500.00 irrevocable Letter of Credit, payable to the City and issued by an FDIC Insured financial institution for the same purpose. The bond, cash or letter of credit must remain effective for one full year after the date of the entity's initial business registration. The City shall not issue a business registration without the entity's compliance with this section.
- B. If an entity is sold or changes ownership in any fashion, the new owner shall comply with Section A herein.
- C. If an entity fails to collect and remit the tax, the City may proceed to revoke the bond, cash or letter of credit to pay the entity's unpaid taxes. The remedy provided hereunder is in addition to the penalties prescribed in 2-4-15. The \$500.00 bond, cash or letter of credit shall be deducted from any award recovered pursuant to 2-4-15.
- D. If an entity violates this section and the City must pursue the bond, cash bond, or letter of credit for unpaid taxes, the bonding requirement under this section is extended for five years for the offending entity.
- E. Any violation of 2-4-14(A)-(E) is separate and distinct from other violations of the Resort Tax Administrative Ordinance. The City intends that any entity that violates this section is strictly liable to the City for the violation and is punishable by a fine of up to \$1000.00 in addition to the penalties found in 2-4-15(2).

2-4-14: VIOLATION; PENALTY:

1. For the failure to report taxes due, failure to remit taxes due and other violations of this chapter, the following penalties may be imposed:

- A. A criminal penalty not to exceed a fine of one thousand dollars (\$1,000.00) or six (6) months' imprisonment, or both;
 - B. The City may collect civil penalties if it prevails in a suit for the collection of Resort Taxes, not to exceed fifty percent (50%) of the Resort Taxes found due plus the costs, including any audit fees, attorney fees, paralegal fees, witness fees and court costs, incurred by the City in the action;
 - C. A civil remedy of the revocation of the offender's City business registration;
 - D. Failure to report or remit taxes, after a Thirty (30) day grace period, will trigger an automatic result in an audit of the offending entity at the expense of the entity in question. This will be in addition to all other penalties and regulations.
2. Regardless of the remedy for each separate incident discussed in section 1, the following penalties shall be applied to all infractions of this ordinance.
- A. Delinquent taxes shall bear interest at the rate of ten percent (10%) per annum.
 - B. Delinquent Payments: Payments not received by the end of the month in which it is due must be made with a cashier's check. Any payment that is made with insufficient funds will result in further payments being made with a cashier's check for the subsequent four quarters.

For each separate incident, the City shall elect to treat the violation as either a misdemeanor pursuant to subsection A of this section, a suit for civil penalties pursuant to subsection B of this section, or a municipal infraction, pursuant to subsection C of this section.

Section 2:

Chapter 4 of Title 2 of the Red Lodge Municipal Code is hereby repealed in its entirety upon the effective date of this ordinance. Ordinances No. 832, 833, 833 first amended, 833 second amended, 833 third amended, 833 fourth amended, 833 fifth amended, 834 and 879 are hereby repealed in their entirety upon the effective date of this ordinance. All other resolutions, ordinances and sections of the Red Lodge Municipal Code and sections thereof in conflict herewith including previous determinations by the Mayor as to the taxable status of any given item are hereby amended or repealed to conform to this Ordinance 901.

Section 2: That this ordinance shall be in full force and effect on February 1, 2014 by the City Council of the City of Red Lodge, Montana,

PASSED AND ADOPTED on the first reading by the City Council of the City of Red Lodge, Montana, on the 26th day of November, 2013.

PASSED AND ADOPTED on the second reading by the City Council of the City of Red Lodge, Montana, on the 10th day of December, 2013.

Brian C. Roat, Mayor

ATTEST:

Debbie Tomicich, City Clerk