

## **Ordinance NO. 906**

**An Ordinance establishing Title 12, Chapter 5 of the Red Lodge City Code concerning the disposition of city-owned lands.**

WHEREAS: The City Council recognizes that City owned land is held in trust for all of the residents of the City of Red Lodge, AND;

WHEREAS: Montana Statute 7-8-4201 provides municipalities with the ability to sell or lease lands owned by the municipality, AND;

WHEREAS: The Red Lodge City Council has a fiduciary responsibility to manage such lands and associated assets to the betterment of the City and ALL of its citizenry, AND;

WHEREAS: The Red Lodge City Council identified the need to develop a comprehensive and fair method for the consideration and disposition of City owned land, AND;

WHEREAS: The Red Lodge City Council recognizes that any decision to sell, lease or rent City owned land must be an open and public process that affords all parties that may be interested in the parcel an opportunity to obtain the parcel,

Now Therefore,

**BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA;**

A new Title 12, Chapter 5: Disposition of City-Owned Lands is hereby adopted as follows:

### **TITLE 12, CHAPTER 5: Disposition of City-Owned Lands**

#### **Section:**

**12-5-1: General Provisions**

**12-5-2: Application / Nomination**

**12-5-3: Review and Approval Process**

**12-5-4: Extension / Renewal of Existing Lease or Rental**

**12-5-5: Proceeds**

**12-5-6: Definitions**

**Appendix A. Flow Chart for Disposition of City-owned Land**

#### **12-5-1: General Provisions**

##### **12-5-1.10 Purpose and Intent**

The purposes and intent of this chapter are:

**12-5-1.11** To adequately protect the real property and associated assets owned by the City of Red Lodge

**12-5-1.12** To establish a process for the disposition of city-owned lands that both ensures adherence to the City's fiduciary responsibilities and allows for a fair, open, and public opportunity for all interested parties to obtain a specified parcel of city-owned land.

**12-5-1.13** To ensure that any proceeds from such a disposition of City land are adequately preserved for the future acquisition of needed lands, buildings, or other real property.

**12-5-1.20 Applicability**

**12-5-1.21** Lands upon which the City merely has a platted right-of-way shall be subject to Montana State Statute regarding the vacation of streets (MCA 7-14-4114) and may not be sold or leased under the provisions of this chapter.

**12-5-1.22** Leases and rentals of hangars and other buildings or lands within the City Airport are governed by the inter-local agreement between the City and the Carbon County Airport Board and are therefore not subject to this chapter. However, other lands owned by the City near the airport, but outside of the Airport's boundaries are still subject to this chapter.

**12-5-1.23** This chapter shall only apply to long-term or permanent dispositions of City-owned lands. Short term uses of City Land shall be subject to the City Code regarding Use of City-Owned Lands. (Ordinance 893)

**12-5-1.24** All other lands and/or buildings of which the City of Red Lodge has a fee-simple ownership shall be subject to this process whether or not they fall within the city limits.

**12-5-1.25** Entities with the power of eminent domain over the City may purchase, lease, or rent properties owned by the City without using the provisions set out in this chapter as long as it is done through a reasonable and public process.

**12-5-1.26** The City Council may terminate the process of disposition at any time prior to final determination. The decision to sell, lease, or rent City-owned lands and / or facilities is at the sole discretion of the City Council of the City of Red Lodge.

**12-5-2: Application / Nomination**

**12-5-2.10 Nomination**

Any person wishing to purchase, lease or rent land or a facility owned by the city must submit a nomination application to the Community Development Director, or designee. The nomination of a City-owned piece of land or facility to be considered for sale, lease or rent shall include:

1. Description of the property to be considered including address and legal description
2. Name, address, and contact information of person(s) nominating the land or facility for disposition.
3. Detailed use plan that adequately addresses the criteria established in 12-5-3.10
4. Fees as defined below.

**12-5-2.11** The City Council may, at its discretion, nominate a parcel for disposition without an external applicant. In this case, there would not be a use plan submitted or an application fee assessed to the City. All bidders however would still need to submit all items required in 12-5-3.52 and 12-5-3.53

#### **12-5-2.20 Application Fees**

**12-5-2.21** An application fee shall be required along with an application / nomination of City-owned land or facilities for consideration for disposition.

**12-5-2.22** These fees shall be used to offset the costs of the administrative and public processes associated with considering a City-owned parcel of land or facility for sale, lease, or rent.

**12-5-2.23** The amount of such fees shall be set by resolution of the City Council. The Council may set different application fee levels for sales, leases, and rentals based upon estimated costs of the process.

**12-5-2.24** Application fees shall be non-refundable except as provided in article 3 of this chapter. If the applicant terminates the process at any point, all application fees shall be kept by the City.

### **12-5-3: Review and Approval Process (See Appendix A. Flow Chart for Disposition of City-owned Land)**

#### **12-5-3.10 Staff Determination of Suitability**

Once a complete application has been received, the Community Development Director, or designee, shall evaluate the nominated property or facility to determine if it is suitable for disposition as proposed by the applicant. If the nominated property is owned by an enterprise fund, the staff that administers that fund shall be included in the suitability determination. This determination shall be made based upon review of the parcel nominated and review of the proposed future use.

**12-5-3.11** The nominated parcel shall be reviewed to determine if it is needed to perform a function, protect an asset, or achieve another goal of the City of Red Lodge. The Red Lodge Growth Policy, the Revitalization Master Plan, the Development Code (Title 12), and other applicable policies shall be considered in this determination.

**12-5-3.12** The future uses of property being sold, leased, or rented by the City shall be in compliance with the intent of the Red Lodge Growth Policy, The Red Lodge Revitalization Master Plan for the historic downtown area, the Development Code (Title 12), and other applicable policies.

- a) Specifically the future use must meet the Standards of General Applicability defined in Article 4.5 of the Red Lodge Zoning Regulations (Title 12, Chapter 4 of the City Code)

**12-5-3.13** All leases, and/or rentals shall further require the lessee to meet the requirements of the use approval, including conditional use permits if required. The agreement

for the disposition of land will require assurance of plan implementation within a certain time or an agreed upon sanction shall be enforced by the City.

#### **12-5-3.20 Review by Land Use and Planning Committee**

After the Staff has made a determination of suitability and issued a staff report explaining the determination, the application shall be reviewed by the Land Use and Planning Committee of the City Council.

**12-5-3.21** If the Staff determination is that the land or facility was NOT suitable for disposition, the Committee review will act as an appeal. In this case, the Committee shall review the property and/or facility using the same criteria used by staff.

- a) If the Committee agrees with staff that the parcel is not suitable for disposition, the application will be denied, the parcel will be removed from consideration, and 75% of the application fee shall be returned to the applicant.
- b) If the Committee disagrees with staff and believes that the parcel is suitable for disposition, the Committee may over-rule the staff decision and send the application on to the full City Council with both the staff report and a brief written explanation of the rationale to over-rule the staff determination.

**12-5-3.22** If the Staff determination is that the land or facility was suitable for disposition, the Committee shall review the parcel and pass the application on to the full City Council with a preliminary recommendation.

#### **12-5-3.30 Public Hearing and Final Determination of Suitability**

Any disposition of City-owned lands shall require a public hearing to allow the citizenry to express opinions regarding both the suitability of the parcel for disposition as well as the value of assets of the parcel to be considered in the appraisal and in setting a minimum bid for the parcel.

The public hearing shall be held at a regularly scheduled meeting of the City Council. Public hearings shall have at least 15 days published notice. Published notice shall meet the standard requirements for land use public hearings as established in the zoning regulations, including mailings to the adjacent land owners. The public hearing shall be held within 30 days after the review by the Land Use and Planning Committee.

After the public hearing, the City Council shall make a final determination on the suitability of the parcel for disposition.

- a) If the Council determines that the parcel is NOT suitable for disposition, the application will be denied, the parcel will be removed from consideration, and 25% of the application fee shall be returned to the applicant.
- b) If the Council determines that the parcel is suitable for disposition, the Council shall move forward with the process to determine fair market value of the parcel.

#### **12-5-3.40 Parcel Appraisal and Setting of Minimum Bid**

Before opening the public auction, the nominated parcel shall be appraised to determine the fair market value. Different processes shall be used for sales than for leases and rentals.

**12-5-3.41** In the case of a sale, the parcel shall be appraised by a General Real Estate Appraiser certified by the State of Montana. The appraiser shall show no interest in the parcel and no conflict of interest. Any bidders who are shown to have a substantial relationship with the appraiser shall be removed from consideration. This appraisal shall be the lowest possible value for the minimum bid for the sale.

**12-5-3.42** In the case of a lease or rental, the council must determine an estimated current land value (CLV), a lease term in months (T), a residual value of the land at the end of the term (RV), and a rate of return (RR)

- a) Current land value shall be determined based upon appraised value of comparable parcels.
- b) Lease term shall be no longer than 300 months (25 years)
- c) Residual value of the land at the end of the term shall include the future value of the land, the value of any assets (or liabilities) that are expected to remain on the land at the end of the term (adjusted for depreciation) and inflation.
- d) Rate of return shall be no less than the greater of 4% or the previous five year average of the consumer price index as determined by Montana Department of Labor and Industry.(CPI)

**12-5-3.43** The minimum monthly payment (MMP) for a lease or rental shall be calculated using the criteria from 12-5-3.42 and the formula

$$MMP = \frac{CLV \cdot r \cdot (1 + r)^T}{(1 + r)^T - 1} \quad \text{where } r = RR/1200$$

**12-5-3.44** The Council may, at its discretion, raise the minimum bid to account for a variety of factors including but not limited to:

- a. Additional costs of this process not covered by the application fee
- b. Assets or other value of the parcel that the Council feels is not adequately reflected in the appraisal.
- c. Potential future value of the parcel
- d. Other factors to fulfill the City's fiduciary obligations

**12-5-3.45** If the Council wishes to place covenants or other restrictions on the parcel, they shall be placed at the same time the minimum bid is set.

### **12-5-3.50 Sealed Bid Public Auction**

**12-5-3.51** Once the minimum bid has been set, the public auction shall be advertised and open for at least 30 days after the date of first publication. All bids must be received at City Hall in a sealed envelope before the deadline set by the City Council.

**12-5-3.52** All bids must include:

- a) Name, address, and contact information of person(s) submitting the bid.
- b) A written statement indicating the amount of the bid. The bid must be equal to or greater than the minimum bid set by the Council.

- c) A bid bond, in the form of a Money Order or equivalent, payable to the City of Red Lodge to guarantee the completion of the disposition. In the case that the disposition should fail to occur due to no fault of the City, the bond of the high qualified bidder shall be kept by the City. The amount of the bond shall be:
  - a. In the case of a sale, 15% of the bid amount.
  - b. In the case of a lease or rent, two months payment based upon the submitted bid.
- d) A bid may include an offer of land and / or other assets instead of money. Any such bid must include a qualified appraisal of those lands and / or assets.

**12-5-3.53** Bids submitted by persons other than the original applicant must also include:

- a) Detailed use plan that adequately addresses the criteria established in 12-5-3.10
- b) An additional check equal in amount to the application fees required of an original applicant.

**12-5-3.54** Within 15 days after the bid deadline, the Land Use and Planning Committee of the City Council shall meet along with the Community Development Director, or designee, to open and certify the bids. Bids that do not include all of the items required in 12-5-3.52 and 12-5-3.53 shall be deemed incomplete and shall be returned to the bidder without further consideration.

**12-5-3.55** The complete bids shall be placed into order from highest bid to lowest bid. If multiple bidders have the exact same bid, the tie shall be broken by the following criteria, in this order:

- a) In the case of a lease or rent, the current lessee or tenant shall be deemed the higher bidder
- b) If the original applicant is one of the bidders, the original applicant shall be deemed the higher bidder
- c) In all other cases, the tie bids shall be placed in the order received with the first bid received at City Hall placed highest in the order.
- d) Toss of a coin

**12-5-3.56** The highest bidder must be reviewed to determine if the proposed use is qualified based on the criteria applied to the original applicant in 12-5-3.12 and 12-5-3.13.

- a) If the highest bidder is deemed qualified, they shall be named the high qualified bidder and the winner of the auction.
- b) If the highest bidder is not deemed qualified, they shall be removed from further consideration and the next highest bidder shall be reviewed.
- c) If the highest bidder is the original applicant, then that bid shall automatically be deemed qualified and shall be named the high qualified bidder and the winner of the auction.

**12-5-3.60** **Final Review by City Council**

Once all of the bids have been opened and reviewed the City Council shall decide whether or not to accept the high qualified bid.

**12-5-3.61** If the Council decides NOT to accept the high qualified bid, the application will be denied and the parcel will be removed from consideration. All bid bonds and fees related to this process shall be returned EXCEPT for the application fee from the original applicant.

**12-5-3.62** If the Council accepts the high qualified bid, the council shall empower the Mayor to execute the documents to finalize the disposition. All funds from the high qualified bidder shall be deposited according to article 4 of this chapter. All other bid bonds and fees related to this process shall be returned.

- a) If the high qualified bidder is not the original applicant, the original applicant's application fee shall be refunded and replaced with the check from the high qualified bidder of the equal amount.

**12-5-3.63** The final determination of the City Council regarding any disposition of any City-owned parcel shall be final and may not be appealed.

#### **12-5-4: Extension / Renewal of Existing Lease or Rental**

##### **12-5-4.10 Extension**

An existing lease or rental of City-owned lands may be extended provided that the following conditions are met:

**12-5-4.11** Both the City Council and the person(s) leasing / renting the City-owned parcel must agree to an extension. Either side may choose to not extend the lease / rental for any reason. Desire to extend the lease / rental must be expressed in writing at least 4 months prior to the end of the existing term.

**12-5-4.12** A new payment rate must be agreed upon. The City shall use the criteria in 12-5-3.40 to determine a new minimum acceptable payment.

**12-5-4.13** The term of the extension shall be not less than three (3) years and not more than 5 years.

**12-5-4.14** A lease or rental may NOT be extended any sooner than one (1) year prior to the end of the existing term.

**12-5-4.15** NO application fee shall be required for the extension of a lease or rental.

##### **12-5-4.20 Renewal**

Any request to continue a lease or rental of a City-owned parcel that does not meet the requirements established in 12-5-4.10 shall be deemed a renewal rather than an extension and shall be subject to the full process established in sections 12-5-2 and 12-5-3 including the application fees.

#### **12-5-5: Proceeds**

##### **12-5-5.10 Accounting / Distribution of Proceeds**

Upon receipt of proceeds from any sale, lease, or rent acquired through the provisions of this chapter, funds shall be distributed according to the following:

**12-5-5.11** If the proceeds are from the disposition of a parcel of dedicated park land, 100% of all proceeds must be distributed to a dedicated fund and preserved for the future acquisition of additional dedicated parks.

**12-5-5.12** If the proceeds are from the disposition of a parcel of land owned by an enterprise fund, 100% of all proceeds must be distributed to the enterprise fund.

**12-5-5.13** In all other cases, at least 90% of all proceeds from the sale, lease, or rent of City-owned lands shall be placed into a reserved account to be known as the City Land / Facility Acquisition Fund (CLFAF). Money within the CLFAF may only be used for acquisition of additional land or the construction of new buildings or other facilities on City-owned land. All purchases with such funds must be to the benefit of the City.

**12-5-5.14** No more than 10% of the proceeds may be used to offset administrative and clerical costs associated with the disposition that generated said proceeds beyond those covered by the application / nomination fee.

**12-5-5.15** Proceeds may not be distributed to any other purpose or fund.

#### **12-5-5.20 Subsequent Use of Proceeds**

**12-5-5.21** Any use of CLFAF funds, established in 12-5-4.11, shall require a super-majority affirmative vote of at least five (5) of the six (6) members of the City Council. Such expenditures shall be explicitly discussed and voted upon at a regular meeting of the City Council as an independent matter and shall not be simply lumped into a vote on the budget as a whole.

**12-5-5.22** The following criteria shall be used to evaluate a proposed use of CLFAF funds:

1. Is this acquisition consistent with the Growth Policy, the Zoning Regulations, the Subdivision Regulations, the Floodplain Regulations and other ordinances and policies of the City?
2. Does this acquisition help the City to achieve one of the goals or objectives of the Growth Policy?
3. Does this acquisition have any significant adverse impacts upon the city or adjacent land-owners?
4. Is this the highest and best use of CLFAF funds?
5. Is this expenditure consistent with the City's fiduciary obligations?

**12-5-5.23** If CLFAF funds are used to acquire land or facilities to be used by an enterprise fund, the enterprise fund must repay the entirety of the acquisition cost to the CLFAF with financing terms to be determined by the City Council at the time of the acquisition.

**12-5-5.24** If CLFAF funds are used to acquire land to be dedicated as park land, the land shall be first acquired simply as fee simple lands owned by the city. Dedication as park land shall be done separately according to procedures set out for that task.

## **12-5-6: Definitions**

### **12-5-6.10 Purpose and Intent**

The purpose and intent of this article is to define words, terms and phrases that are important in the application of this chapter and require specification beyond the definitions in a common dictionary to describe their applicability in this chapter. Definitions provided here are intended for use within this chapter only and may not be appropriate to other sections of the Red Lodge City Code.

### **12-5-6.20 Definitions**

1. **Disposition:** Sale, Lease, or Rent of City-owned land.
2. **Long-term Disposition:** Any sale of City-owned land or any lease or rental of City owned land or facilities for a period longer than 30 calendar days.
3. **Parcel:** Piece of property and/or facility nominated for either sale, lease or rent
4. **Short-term Use:** Any use of City-owned lands or facilities by a third party for 30 calendar days or less.

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City of Red Lodge  
Ed Williams, Mayor

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Debbie Tomicich, City Clerk