

## ORDINANCE NO. 952

### AN ORDINANCE REPLACING CHAPTER 4 OF TITLE 2 OF THE RED LODGE MUNICIPAL CODE ADMINISTRATIVE ORDINANCES GOVERNING THE COLLECTION AND REPORTING OF RESORT TAX REVENUES.

**WHEREAS**, on June 2, 2020, the voters of the City of Red Lodge approved the early renewal of the three percent (3%) resort tax and levy of the additional one percent (1%) infrastructure resort tax pursuant to Resolution 3538 Amended and Resolution 3539 Amended; and

**WHEREAS**, the three percent (3%) Resort Tax, as approved by the voters, will take effect on July 9, 2020 and the one percent (1%) infrastructure resort tax will take effect thirty-five (35) days after approval of the electors, which is July 7, 2020; and

**WHEREAS**, §7-6-1505, Montana Code Annotated requires that the City Council enact an administrative ordinance governing the collection and reporting of Resort Tax revenues; and

**WHEREAS**, on June 2, 2020, the electorate overwhelmingly renewed the three percent (3%) resort tax and the levy of an additional one percent (1%) resort tax dedicated solely to infrastructure; and

**WHEREAS**, those changes allow for a broader use of the 3% resort tax and specify the specific uses of the 1% resort tax; and

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" 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:**
- 2-4-5: PAYMENT OF TAX:**
- 2-4-6: RECORDS AND TAX FORMS:**
- 2-4-7: AUDITS:**
- 2-4-8: USE OF TAX MONIES:**
- 2-4-9: PROPERTY TAX RELIEF FUND:**
- 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 in 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.

EMERGENCY SERVICES: Fire protection, ambulance and law enforcement.

INFRASTRUCTURE: Tangible facilities and assets related to water, sewer, wastewater treatment, storm water, solid waste and utilities systems, roads, bridges, and other transportation needs.

**2-4-3: RESORT TAX IMPOSED:**

A. Tax Imposed: Pursuant to the election held on June 2, 2020, 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 business or organization that serves beer, wine, liquor or other alcoholic beverages by the drink;
4. Destination ski resorts and other destination recreational facilities;
5. Businesses 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 July 9, 2020, and will expire on July 9, 2045.

3. The exact rate of the Infrastructure Resort tax is one percent (1%).

4. The duration of the Infrastructure Resort tax is until such time as the project for which it was designated had been completed and paid in full.

C. Duty of Collection: It is the duty of each owner of a business mentioned in this chapter to collect, upon sale, the tax here in 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 2-4-3(A) 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
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- 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 or other short-term vacation 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 fundraising events
    - ❖ Movie/Theater Tickets and all concessions
    - ❖ Event and entertainment tickets and cover charges with the exception of tickets for not for profits fund raising events.

- 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 2-4-14 of this ordinance.
2. The City shall accept no good or service in lieu of tax collection.
3. For good cause shown in a written request of a business who would pay less than five dollars (\$5.00) a month, the Mayor may extend the time for making returns and paying tax due.
4. Pursuant to Section 2-4-14(D), there is a thirty (30) day grace period following the January 20, April 20, July 20 and October 20 tax payment due dates.
5. At the direction of the Mayor, payment arrangements may be made through the City Clerk's Office. If payment arrangements are permitted, the late payment of resort taxes and penalties are due and payable in full by the following quarter.

6. A business may choose to pay its resort tax monthly.

B. Collection Duties and Responsibilities:

1. The Office of the City Clerk is responsible for receiving and accounting for the Resort Tax receipts.
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.

**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. Businesses shall maintain records sufficient to validate compliance with this chapter. All businesses 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 five percent (5%) of the three percent (3%) Resort Tax revenues derived during the preceding fiscal year.

- B. Ninety-five percent (95%) of the three percent (3%) resort tax revenue must be utilized for capital improvements to streets, alleys, water, sewer, stormwater, emergency services, trails, parks, recreational facilities, city beautification, debt repayment and operational and maintenance cost related to streets, alleys, urban forestry, trails, parks, recreational facilities and city beautification expenditures.
- C. The 1% (one percent) resort tax shall only be utilized on the infrastructure projects related to stormwater and stormwater related improvements including, but not limited to, stormwater pipes, stormwater detention, curbs, gutters, sidewalks and streets related to stormwater projects.

**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 business owner 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 and payable by the business owner 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.

Pursuant Section 3.04(11) of the Charter of the City of Red Lodge, Carbon County, Montana, the Mayor may appoint temporary committees as deemed necessary to assist and advise the Mayor in the review of resort tax collection, budget, expenditures and recommendations.

**2-4-13: BONDING & COLLECTION:**

A. Every business, 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 business 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 (1) full year after the date of the businesses initial business. The City shall not issue a business registration without the business' compliance with this section.

B. If a business is sold or changes ownership in any fashion, the new owner shall comply with Section A herein.

C. If a business fails to collect and remit the tax, the City shall proceed to revoke the bond, cash or letter of credit to pay the businesses unpaid taxes. The remedy provided hereunder is in addition to the penalties prescribed in Section 2-4-14. The bond, cash or letter of credit shall be deducted from any award recovered pursuant Section 2-4-14.

D. If a business violates this ordinance and the City must pursue collection for unpaid taxes, the bonding requirement under this section is extended for five years for the offending business. The offending business must post a cash bond of \$500.00 or the equivalent of one (1) year of resort taxes, whichever is more.

E.



The City shall require businesses to pay monthly if the business is a repeated violator. A repeated violator is a business that has failed to report, failed to collect or failed to pay resort taxes two or more times within the previous one-year period.

- F. Any violation of Section 2-4-14(A)-(D) is separate and distinct from other violations of the Resort Tax Administrative Ordinance. The City intends that any business 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 Section 2-4-14.

**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; (this is the last resort).
  - 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 result in violation audit of the offending business at the expense of the business in question. This will be in addition to all other penalties and regulations. The violation audit is mandatory.
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 eighteen percent (18%) per annum.
  - B. Failure to File/Report: A business that fails to file or fails to report resort taxes when due have a 30-day grace period pursuant to Section 2-4-5(A)(4). If at the expiration of the 30-day grace period and the business fails to file or fails to report resort taxes, a penalty of \$250.00 will be imposed. Should the failure to file or report taxes continue for more than sixty (60) days, an additional \$500.00 penalty will be imposed.
  - C. Failure to Pay the required resort tax will result in the imposition of eighteen percent (18%) interest per annum plus a \$250.00 penalty following the thirty (30) day grace period. This is in addition to any penalty imposed for failure to file.
  - D. 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 1:

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. 901 and 901 First Amendment 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 952.

Section 2: That this ordinance shall be in full force and effect on July 23, 2020 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 9th day of June, 2020.

**PASSED AND ADOPTED** on the second reading by the City Council of the City of Red Lodge, Montana, on the 23rd day of June, 2020.



Bill Larson, Mayor

ATTEST:

  
Loni Hanson, City Clerk