

## Ordinance No. 958

### AN ORDINANCE OF THE CITY OF RED LODGE, MONTANA, AMENDING TITLE 12, CHAPTER 4, ARTICLE 9, SECTION 30 ENTITLED DUTIES AND RESPONSIBILITIES OF DECISION MAKING AND ADMINISTRATIVE BODIES, SPECIFICALLY REGARDING THE BOARD OF ADJUSTMENT

**WHEREAS**, the State acknowledges the need to permit occasional variances from Zoning Regulations and provides local governments the provision for a Board of Adjustment (BOA) for the purpose of hearing appeals and authorizing variances apart from decisions made by a City appointed Planning Board and Zoning Commission or zoning official (the *MCA Sec. 76-2-321*); and

**WHEREAS**, *MCA 76-2-321(2)* allows that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to decisions made by their Planning Board and Zoning Commission... to serve as the “Board of Adjustment”; and

**WHEREAS**, City documents dated 2014 cite recommendations, discussion and decision to have City Council serve as the BOA though there is no ordinance found in either the Zoning Regulations or the Municipal Code reflecting that decision (memo from City Planner and minutes from City Council Meeting dated August 2014); and

**WHEREAS**, the 2022 Zoning Regulations Section 4.9.31, states that the BOA remains established upon appointment of the Mayor and consent of City Council; and

**WHEREAS**, the 2022 Zoning Regulations Section 4.9.33 states “There is hereby reaffirmation of the creation and existence of the Red Lodge Board of Adjustments”; and

**WHEREAS**, there has been no established or functioning BOA for the City of Red Lodge by action of Mayoral appointments and City Council consent since 2014; and

**WHEREAS**, it is in the best interest of the City of Red Lodge to formally ordain the City Council as its BOA as promptly and properly as possible.

**NOW THEREFORE BE IT ORDAINED** BY THE CITY COUNCIL THE FOLLOWING REVISIONS TO RED LODGE MUNICIPAL CODE:

1. **Title 12, SECTION 4.9.31 of - Mayor and City Council (A, update #2 and add #8)**
  - A. Powers and Authority
    - (2) Appoint Planning Board/Zoning Commission (striking out “and Board of Adjustment”).

The Mayor shall appoint and the City Council shall consent to appointing members of the Planning Board/Zoning Commission (striking out “and Board of Adjustment”).

(8) The City Council shall serve as the Board of Adjustment for the purpose of hearing appeals and determining variances in accordance with Montana Code *76-2-321*

2. **Title 12, SECTION 4.9.33 - Board of Adjustment (Changes as follow):**
  - A. Establishment

(1) The City Council shall serve as the Board of Adjustment in accordance with **MCA 76-2-321**, Board of Adjustment. Therefore, existence of the Red Lodge Board of Adjustment (BOA) is hereby reaffirmed.

(2) Meetings of the Board must be held at the call of the presiding officer and at other times that the Board may determine.

(3) In accordance with **MCA 76-2-327**, any person or persons aggrieved by any decision of the Board of Adjustment may present to a court of record a petition setting forth that the decision is illegal fully or partially and on what grounds.

**B. Powers and Authority**

As set forth by **MCA 76-2-323**, the BOA shall have the following powers and authority under these regulations:

(1) To Hear and Decide Appeals

The BOA shall evaluate the application, staff report and public testimony; and shall approve, conditionally approve, table for further study, or deny the appeal based on the evidence presented, and compliance with the applicable criteria herein.

(2) To Authorize Variances

The BOA shall evaluate the application, staff report and public testimony; and shall approve, conditionally approve, table for further study, or deny the variance based on the evidence presented, and compliance with the terms of these regulations pursuant to Section 12.4.9.81, Variance.

(3) The presiding officer or in the presiding officer's absence the acting presiding officer may administer oaths and compel the attendance of witnesses and/or specifically relevant experts.

**C. Votes Needed for Board Action**

A vote count of four members of the board is required to reverse any order, requirement, decision or determination of any such administrative official; to decide in favor of the applicant about any matter the person/persons may have been required to pass under ordinance; or to effect a variation in such ordinance (**MCA 76-2-324**)

**D. Public Access to Board Activities**

In keeping with State Code **76-2-325**, all meeting conditions for the BOA will be met:

(1) All BOA meetings shall be open to the public

(2) The board shall keep minutes of the proceedings including the vote of each member, any absences or failures to vote. It shall keep records of its examinations and other official actions. The Minutes shall be immediately filed by the City as record of the board and made publically available.

**E. Appeals to Board of Adjustment**

For matters of Municipal Zoning, any person aggrieved by an officer, department, board or bureau of the City affected by any decision of the administrative officer may take an appeal to the BOA by filing with the City a notice, in writing, to appeal within 10 days. The right to an

appeal will be waived if the notice to appeal is not filed in writing to the City within 10 days. Thereafter, the BOA will hear the appeal within a reasonable period of time. The appeal must be filed and managed according to the procedures provisioned by **MCA 76-2-326**.

**3. Repealer:**

All other Ordinances and Resolutions, if any exist, pertaining to above noted sections of the Municipal Code are hereby repealed upon the effective date of the Ordinance.

**4. Effective Date:**

This Ordinance shall be effective 30-days after approval of the second reading by the City Council of Red Lodge, Montana.


**First Reading** by the Council on the 26<sup>th</sup> day of July 2022.

**Second Reading** by the Council on the 9<sup>th</sup> day of August 2022.

**PASSED** and **APPROVED** this 9<sup>th</sup> day of August 2022.

City of Red Lodge

By:   
Kristen Cogswell, Mayor

Attest:   
Loni Hanson, City Clerk