

ORDINANCE No. 960

AN ORDINANCE OF THE CITY OF RED LODGE, MONTANA, TO REPEAL AND REPLACE ORDINANCE 928 AND 928 A-1ST AMENDMENT, AND THE MUNICIPAL CODE PERTAINING TO EVENT PERMITS AND REGULATIONS FOR THE USE OF CITY-OWNED PROPERTY AS GOVERNED IN TITLE 8, CHAPTER 8 USE OF CITY-OWNED PROPERTY

WHEREAS, the City-owned properties are held by the City for the benefit of the public; and

WHEREAS, on occasion, parties other than the City of Red Lodge may wish to use City-owned or City-managed properties for specific uses;

WHEREAS, State HWY 212 runs through the center of the City and events that close the Highway or restrict Right of Ways impact the City, its local and through traffic, commerce, and potentially public safety; and

WHEREAS, negative effects of such uses may be avoided or otherwise adequately mitigated; and

WHEREAS, it is in the public and private interest of the City of Red Lodge to regulate the use of City-owned and City-managed Property through the adoption of this ordinance for the purpose of providing clear and consistent rules and guidelines that ensure fair and uniform treatment of applicants while protecting the health, safety and welfare of its residents and visitors alike.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF RED LODGE:

Title 8 Public Ways and Public Property, Chapter 8 Use of City-Owned Property, of the Red Lodge Municipal Code is hereby amended as set forth by this Ordinance as below:

Section 1. Purpose

The City recognizes events may provide cultural enrichment, promote economic vitality, enhance community identity, and create funding opportunities for service organizations. The purpose of this Ordinance is to establish a coordinated process for managing events utilizing or held on City-owned and managed property to protect the health and safety of event patrons, residents, workers, and visitors, and to regulate competing uses of City property. It is also the City's intent to protect the rights of people to engage in expressive activities in public places and to establish reasonable time, place, and manner regulations for such activities. This Ordinance is further intended to create mechanisms for cost recovery that allow the City to recoup some of the costs associated with supporting events but which do not unduly impact the viability of events.

8-8-2 Definitions:

Abutting or Adjacent property – properties next to, neighboring, adjoining, or diagonally opposite the event location.

Authority – The City Mayor/Manager or City Staff designated by the Mayor.

City Property – means any owned, controlled, managed, and/or maintained properties including: streets, right-of-ways, sidewalks, alleys, parks, trails, structures, buildings, and lands, held by the

City for the benefit of the public, including that portion of Highway 212 located within the City Limits of Red Lodge.

City Utilities – means use of City water, sewer, solid waste collection or disposal, electricity, and gas.

Cost Recovery fees- The reimbursement for the cost of utilities and/or services deemed necessary by the City Authority to sufficiently support the event, maintain public health and safety, and reduce the risk of liability to the City.

Exclusive Use – something that is used by one person or group and not shared with anyone else.

Expressive activity - conduct that is protected by the United States or Montana Constitutions, this includes activity in which the sole or principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of opinions, views or ideas, and for which no fee or donation is charged or required as a condition of participation in or attendance at such activity. Expressive activity does not include commercial events, sports events, fundraising events, or events the principal purpose of which is entertainment.

Parade – a public procession, especially one celebrating a special day, or event, and may including marching bands and floats.

Picketing – a person or group of workers who protest outside a building to prevent other workers from going inside especially because they have a disagreement with their employers.

Protest – a statement or action expressing disapproval of or objection of something.

Public Event – means an event which is open to and may be attended by the general public, free of charge.

Rally –meeting of people making a political protest or showing support for a cause.

8-8-3: Permit Required.

An event permit must be obtained and approved by the Authority, or designee, for the following events or if any one or more of the following circumstances apply:

A. Any event that is requesting exclusive use of City property.

B. Any event that involves assembling or traveling in unison on any City Property.

C. Any event involving seventy-five (75) people or more using City Property regardless of whether or not they are requesting exclusive use.

D. Any event on City Property that involves the sale, giveaway, or distribution of alcoholic beverages, physical alteration to property, sale of goods and/or services, and/or solicitation as set forth in subsection 8-8-5(B) of this ordinance.

E. Any event that requires temporary waiver of the City's ordinance prohibiting consumption of alcoholic beverages, or possession of open containers of alcoholic beverages, on public property.

F. The use of any sidewalks along Broadway Avenue other than by the adjacent property owner for the purpose of marketing their adjacent commercial business.

8-8-4: Exemptions

The following activities are exempt from the permit requirement:

- A. Funeral processions.
- B. Lawful picketing on sidewalks when the number of participants does not substantially impede, obstruct, impair, or interfere with the free use of the sidewalk or the conduct of business.
- C. Activities conducted by a governmental agency acting within its scope of authority.
- D. Features within City Parks (gazebo, picnic tables, horseshoe pits, basketball courts, grills, playgrounds, tennis courts, etc.) are first-come, first serve. Exclusive use requires submission of an application for permit.
- E. Organized Activities by user groups using recreational facilities under their Memorandum of Understanding (MOU) with the City. Groups that want exclusive use of a recreational facility holding a MOU with the City need to coordinate directly with the user group.
- F. Spontaneous events involving solely expressive activity which are occasioned by news or affairs coming into public knowledge less than forty-eight (48) hours prior to such event may be conducted on City Property without a permit, subject to the restrictions set forth below:
 1. The event shall be conducted on property that is not occupied by another event.
 2. If practicable, the spokesperson or leader(s) of the event should give notice at least six (6) hours prior to the event to the City Authority of the date and time of the event and provide an estimate of the approximate number of persons who will be participating so that the City may assess the need for additional public services.
 3. The spokesperson or leader(s) of the event shall submit a statement to the City Authority setting forth the purpose of the event prior to the event, if practicable, but no later than twenty-four (24) hours after the event's conclusion.
 4. The consumption of alcoholic beverages, physical alteration to property, sales of goods and/or services, and/or solicitation are prohibited at spontaneous events.

8-8-5: Application

A. To receive a permit, the applicant must submit an application to the City Authority on a form approved by the City. The applicant must provide the following information:

1. The name, address, telephone number, and e-mail address of the event organizer,
2. A description of the purpose of the proposed event,
3. A statement of any fees to be charged to participants or spectators in connection with the event,
4. The proposed location of the event including a plan and map depicting the placement of temporary structures or facilities on public property or public right-of-ways and, if the event is a parade or processional, a map of the proposed route,

5. Date(s) and hours of proposed use including set-up and break down times,
6. Estimated number of participants,
7. Anticipated impacts on parking and traffic patterns for vehicles and pedestrians including compliance with the American Disabilities Act (ADA),
8. Anticipated sources of noise include but are not limited to (music, public address system, or amplified sound) including proposed mitigation measures,
9. Provisions for trash removal and clean up,
10. Whether or not restrooms are required and provided,
11. Any anticipated impact on police, fire, or ambulance services,
12. A certification that the event organizer shall be financially responsible for the cost of each departmental services, if applicable,
13. Proof of liability insurance,
14. Use of campfires or open flames,
15. Use of City utilities and/or services,
16. Sales of goods or services,
17. If requested, why exclusive use is necessary,
18. Use of Montana Department of Transportation (MDT) Highways or right-of-ways are subject to their review and correspondence. Approval or acceptance of the request from MDT must be included with the application,
19. Use of the airport grounds are subject to the Airport Board review and approval. Approval of the request must be submitted with the application. When a Notice to Airmen or Notice to Air Missions (NOTAM) is required, it will be provided to the City Authority at least 24 hours in advance of the event,
20. Evidence of Notification of Abutting and Adjacent Properties: The applicant shall provide, with the application, evidence of notification of each property owner or its authorized representative abutting and adjacent the proposed permit site for their comment prior to the date of approval. All comments shall be included and submitted with the application,
21. Signed checklists and comments from each City Department and County Service, including but not limited to: The applicant shall obtain a written response regarding the proposed use from the City Police Department, City Public Works Department, City Planning Department, and Carbon County Fire, Rescue and Emergency Medical Services (EMS),
22. Any necessary permits or licenses required by State, County or City,
23. Whether the applicant is requesting any special signage (to be provided by applicant),
24. Any other information reasonably required by the City Authority.
25. All Event Applications will be noticed by the City and made available for public view and comment prior to City's final response.

Any incomplete application will be denied. The Applicant may resubmit the application with any updated information.

B. Alcoholic Beverages on City Property: If alcohol will be sold, distributed, or given away for any event on City Property, the applicant will need to additionally specify control measures, server certification, obtain a properly issued permit or license authorizing the sale or service of alcohol pursuant to Montana law, and obtain a waiver of the City Open Container Ordinance. Additional fees and damage deposit may be required. All State liquor control regulations shall be complied with by the applicant and all applicable State permits shall be obtained and a copy provided to the City with the application. In reviewing the application for a permit to serve alcoholic beverages on City Property, the City Authority shall consider the following factors:

1. The appropriateness of the property for the proposed use;
2. Any potential negative impact on abutting properties, right-of-ways, or pedestrians;
3. The estimated number of people likely to be at the event, as well as the estimated amount of alcohol available.

D. Public Health, Safety, and Welfare: The City shall have the right to impose any condition pertaining to the public health, safety, and welfare upon its approval of the permit, and shall retain the right through its Authority to immediately revoke said permit to use City Property for any violation of the permit approval conditions. The City shall require any applicant to pay cost recovery fees to the City including, but not limited to: trash removal, recycling, street cleaning, law enforcement, and temporary restrooms according to the assessment of the City Authority. Failure to obtain permit approval in advance shall result in the City's right to cause immediate cessation of the activity and the possible issuance of a trespass citation.

E. Fees

1. At the time of application submission, the applicant shall pay all applicable fees as set forth in the use of City Property implementing resolution.
2. Deposit Refund: The applicant's security deposit shall be refunded upon verification by the City that, at the sole discretion of the City, the area is trash free and has been restored to its same or better condition prior to the use by 8:00 a.m. immediately following the last day of use or as otherwise agreed upon by permit approval. Upon such verification, the applicant's deposit will be refunded on the first City business day following verification.
3. Use of City Property for camping during events shall be subject to fees as established by resolution of City Council, which shall take into account the fair market value for said use.

F. The City Authority shall refer the application to City departments or personnel as he or she deems necessary for review, evaluation, investigation, and recommendations regarding approval or disapproval of the application. All City departments shall respond in writing with any concerns, issues, suggestions, or approval.

G. Deadline for filing application: The deadline for filing a completed application shall be a minimum of 45 days in advance of the event, but not more than 270 calendar days (approximately 9 months) in advance. Application for reservation of a park feature less than 45-days in advance shall be permitted based on its availability and at the discretion of the Authority.

In the event the applicant can show good cause to request a waiver from the 45-day submittal requirement, the Authority may waive and reduce said 45-day requirement. One example of good cause would be if the applicant has provided, with the application, all required information including the adjacent and abutting notifications and satisfactorily addressed any comments. Additionally, the applicant would have also submitted evidence of satisfactorily addressing any concerns from staff (community development, public works, police department) and any other applicable outside referral agencies including but not necessarily limited to the Red Lodge Fire Department, Airport Board, Montana Department of Environmental Quality, Montana Department of Transportation, and Carbon County Sanitarium.

H. The City Authority shall announce receipt of an application at the subsequent Council meeting during Mayor's comments.

8-8-6: Review Process

A. The City Authority shall respond to the event applicant within thirty (30) days of the application submission. The City Authority shall issue an event permit if he or she determines the following criteria have been met. Provided, however, such criteria shall not be applied in a manner that will unreasonably restrict expressive activity or other activity protected by the Montana or the United States Constitutions.

1. The preparation for, the conduct at, and the conclusion of the proposed event will not unreasonably burden City resources necessary to preserve the public's use of the street(s) in the area contiguous to the street(s) or other City Property being used for the event.
2. The preparation for, the conduct of, and the conclusion of the proposed event will not unduly impede, obstruct, or interfere with the operation of emergency vehicles or equipment in or through the permit area or adversely affect the City's ability to perform Municipal functions or furnish services in the vicinity of the permit area.
3. The proposed event does not otherwise present a substantial or unwarranted health, safety, noise, or traffic hazard.
4. The proposed event will be of a nature and size appropriate to the proposed venue or site and will occur during approved hours for that venue or site.
5. The proposed event will not cause other adverse impacts on health or safety to surrounding residential or commercial uses, which cannot be effectively mitigated.
6. The applicant has obtained all permits required elsewhere in this Code or by other applicable laws, rules, or regulations (such as MDT or Airport Board).

B. The City Authority may place reasonable conditions on any permit concerning the time, place, or manner of holding the event as is necessary to coordinate multiple uses of City Property, assure preservation of City Property, prevent dangerous, unlawful, or impermissible uses, and protect the safety of persons and property. Provided, however, such conditions shall not be imposed in a manner that will unreasonably restrict expressive activity or other activity protected by the Montana or the United States Constitutions. Conditions the City Authority may impose include, but are not limited to:

1. Establishment of an assembly or disbanding area for a parade or like event.
2. Accommodation of an event's pedestrian and vehicular traffic, including restricting events to City sidewalks, portions of a City street, or other public right-of-way, and implementation of a parking or transportation plan.
3. Conditions designed to avoid or lessen interference with public safety functions and/or emergency service access.
4. Number and type of vehicles, animals, or structures to be displayed or used in the event and their locations.
5. Provision and use of traffic cones or barricades.
6. Provision or operation of sanitary facilities, including handicap accessible sanitary facilities.
7. Provision of a waste management plan, and the cleanup and restoration of the site of the event.
8. Use of sound amplification equipment, and restrictions on the amount of noise generated by motors and other equipment used in the course of the event.
9. Manner of providing notice of permit conditions to permit participants and those businesses or residents who may be directly affected by the conduct of the event.

10. Reasonable designation of alternate sites, times, dates, or modes for exercising expressive activity.
11. Obtaining any and all business licenses or other necessary permits required by this Code for the sale of food, beverage or other goods or services at the event.
12. Manner by which alcohol sales and service, if any, shall be conducted at the event.
13. Limitations on the use of spray paint or chalk paint as directional cues for participants.
14. Provisions for public safety and the preservation of public property such as traffic/pedestrian control, fire safety, the closure of streets or intersections, the diverting of traffic, etc.

The Authority shall provide the applicant a written explanation for any decision that imposes conditions on the permit.

C. The Authority shall deny an application for a permit or revoke a permit if the Authority finds any of the following:

1. The applicant has knowingly made a false, misleading, or fraudulent statement of fact to the City in the application process.
2. The application does not contain the information required by this Ordinance.
3. The application does not satisfy the requirements of this Ordinance.
4. The applicant has damaged City property and has not paid in full for such damage or has other outstanding and unpaid debts related to a prior permit issued by the City.
5. The applicant has failed to meet conditions and operate within the parameters of a previous permit granted by the City (including payment of fees).

The City Authority shall provide the applicant a written explanation for any denial of a permit. If the application is denied, the applicant may appeal to City Council.

D. In deciding whether to approve an application for a permit, no consideration will be given to the message of the event or activity, the content of speech, the identity or associational relationships of the applicant, or to any assumptions or predictions as to the amount of hostility which may be aroused in the public by the content of speech or message conveyed by the event or activity.

8-8-7: Cost Recovery for Events

A. The Authority shall charge the applicant for the permit an administrative processing fee as established by the City Council by resolution, as well as the cost of any City Utilities or services used.

B. If the event involves solely expressive activity, the Authority shall waive the administrative processing fee for an indigent person that cannot pay for such fees. An indigent person may include, but is not limited to, a person who is eligible to receive, or is receiving, public assistance. An organization in which a majority of the members are indigent may also be eligible for waiver. The person or organization is required to apply for indigent status at the time of permit application. The person or organization is required to provide such information and documentation as may be reasonably necessary for the Authority to verify such status. The Authority may deny an application for indigent status if the applicant fails to timely provide the information and documentation requested.

C. The Authority shall charge the applicant a fee if the request involves the exclusive use of City Property, if it involves the sales of goods or services, solicitation, or if it involves physically altering the property.

8-8-8: Insurance

A. The applicant for a permit must possess or obtain comprehensive general liability insurance with single limit coverage of at least one million dollars (\$1,000,000.00), or as set by resolution of City Council, to protect the City from liability for damage on account of bodily injury and/or property damage arising from the event. Additional insurance may be required due to the type of event.

1. The insurance policy must name the City, its officers, employees, and agents as an additional insured.
2. The insurance coverage must be maintained for the duration of the event.
3. The applicant's permit shall be immediately and automatically revoked if such insurance coverage is invalid, not current, or not in effect while using City Property.
4. The certificate of insurance must be submitted to the City with the application.

B. The Authority shall waive the insurance requirement if the event involves solely expressive activity and:

1. The applicant is an indigent person that cannot pay for the required insurance. An indigent person may include, but is not limited to, a person who is eligible to receive, or is receiving, public assistance. An organization in which a majority of the members are indigent may also be eligible for waiver. The person or organization is required to apply for indigent status at the time of permit application. The person or organization is required to provide such information and documentation as may be reasonably necessary for the Authority to verify such status. The Authority may deny an application for indigent status if the applicant fails to timely provide the information and documentation requested; or
2. It is objectively impossible to obtain insurance coverage as demonstrated by the applicant's submission of two (2) statements from independent licensed insurance brokers stating that the insurance is unavailable.

8-8-9: Indemnity

Each applicant shall execute a hold harmless agreement in a form approved by the City agreeing to defend, indemnify, and hold harmless the City against losses and liabilities incurred from the conduct of the applicant or its officers, employees, agents, participants, and the public. The agreement must be submitted to the Authority with the application for a permit.

8-8-10: Time Requirements

A. An application for a permit for an event involving solely expressive activity must be complete and submitted to the Authority at least three (3) days before the proposed event is to be held unless the event qualifies for a spontaneous event exemption under subsection 8-8-4(E) of this Ordinance.

B. An application for a permit for all other events must be completed and submitted to the City Manager at least forty-five (45) days before the proposed event is to be held.

8-8-11: Appeal

Any applicant aggrieved by a decision of the Authority with respect to a permit may appeal such decision to the City Council by filing a written notice of such appeal with the City Clerk within five (5) business days of the decision. The City Council shall decide the appeal at its next regularly scheduled meeting or may call a special meeting to decide the appeal. The City Council's decision shall be final upon majority of the voting council except for judicial review.

8-8-12: Penalty

Any person(s) who violate any of the provisions of this Ordinance shall be guilty of a misdemeanor and shall be punished up to \$500 fine and up to 6 months in jail, or both. Each day of violation is a separate offense.

Effective Date of Ordinance

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

BE IT ORDAINED BY MEMBERS OF THE CITY OF RED LODGE:

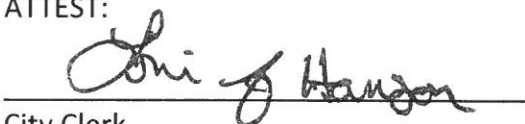
PASSED AND APPROVED on the first reading by a majority of the members present of the City Council of the City of Red Lodge on the 22nd day of November, 2022.

PASSED AND APPROVED on the second reading by a majority of the members present of the City Council of the City of Red Lodge on the 13th day of December, 2022.



Mayor

ATTEST:



City Clerk