

**Resolution No. 3334**

**A RESOLUTION OF THE CITY COUNCIL DECLARING ITS INTENTION TO ESTABLISH A TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID) CONSTITUTING NON-CONTIGUOUS PROPERTIES UTILIZED FOR SHORT TERM LODGING PURPOSES WHO HAVE VOLUNTARILY PETITIONED THE CITY OF RED LODGE TO ESTABLISH A TBID FOR THE PURPOSE OF AIDING TOURISM, PROMOTION, AND MARKETING WITHIN THE DISTRICT AND ALLOWING HOTELS/MOTELS OUTSIDE THE CITY LIMITS TO DONATE FUNDS TO THE TOURISM BUSINESS IMPROVEMENT DISTRICT FOR SUCH PURPOSES.**

**WHEREAS**, several local lodging facilities located in Red Lodge, Montana, have expressed a desire and need for the creation of a Tourism Business Improvement District (TBID) pursuant to the provisions of §7-12-1101, Montana Code Annotated, et seq., (MCA), to aid in tourism, promotion, and marketing within the City of Red Lodge; and

**WHEREAS**, §7-12-1111, MCA, allows the City Council to establish a TBID upon receipt of a petition signed by the owners of more than 60% of the area of the property proposed in the petition to be included in such a district. Further, §7-12-1111 (4) MCA allows a district to be composed of noncontiguous areas if the properties in the district have the common purpose of providing overnight stays at lodging facilities. State law also requires the boundaries of a district with noncontiguous areas to encompass all properties in the district with the same identified purpose; and

**WHEREAS**, the City Clerk received a petition signed by real property owners and/or their legally authorized representatives requesting that the City Council establish a Tourism Business Improvement District in Red Lodge as required by §7-12-1111 MCA. The petition requests that the district be established for a period of 10 years and that the district include all lodging facilities within the boundaries of the City of Red Lodge that have petitioned to be included in such district. The petition is on file in the City Clerk's Office at City Hall and is incorporated herein by reference; and

**WHEREAS**, the City Clerk has reviewed the petitions received and hereby certifies that the petition contains the signatures of property owners or their authorized representatives totaling greater than 60% of the area of the proposed district that is subject to assessment under the proposed district; and

**WHEREAS**, upon receiving a valid petition, §7-12-1111 MCA requires the City Council to adopt a resolution of intention to create a TBID, provide legal notice, observe a protest period, and conduct a public hearing on the creation of the district. In the event that an insufficient number of protests from property owners liable to be assessed by the proposed TBID are received, §7-12-1115 MCA provides that the City Council has jurisdiction to order the creation of the district.

**WHEREAS**, the proposed district as shown in Exhibit A meets the requirements of §7-12-1111 MCA because it complies with applicable zoning regulations, and the properties subject to assessment under the TBID are primarily zoned commercial or the underlying zoning permits the short term rental of the property.

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Red Lodge, (the "City"), Montana, as follows:

**Section 1. Petition.** The City Council affirms that the City received petitions signed by more than the minimum requirement of 60 percent of the owners of the property proposed to be included in the district.

**Section 2. Intention declared and purpose announced.** The Red Lodge City Council declares its intention to establish a Tourism Business Improvement District in the City of Red Lodge and declares that any assessments collected and used by the district will be pursuant to and in compliance with the statutory purposes set forth in the Business Improvement District law, specifically, §7-12-1101 through 7-12-1144, MCA, as amended. The general purposes of the district include funding uses and projects for tourism promotion within Red Lodge to be specified and included in an annual work plan and budget that must be reviewed and approved by the City Council pursuant to §7-12-1131 and §7-2-1133 MCA.

**Section 3. Name of the district.** If the City Council creates the District, it shall be known and designated as the Red Lodge Tourism Business Improvement District (Red Lodge TBID).

**Section 4. Limits and boundaries of District**

- A. Outer limits of the Red Lodge TBID. It is the intent of the City Council that should the Red Lodge TBID be established, the district shall include all commercially zoned and only those residentially zoned properties that specifically consent to inclusion in the district. A map of the current properties included in the district is attached as "Exhibit A"
- B. Properties included within the Red Lodge TBID Pursuant to §7-12-1111 MCA, it is the City Council's intention that specific non-contiguous properties used for the common purpose of providing overnight stays at lodging facilities and meeting the criteria outlined in Section 7 will be the only properties subject to Red Lodge TBID assessments. A current listing of each of the properties proposed to be included in the District is shown on "Exhibit B".
- C. New and/or expanded facilities subject to Red Lodge TBID If property located within the city limits: 1) voluntarily petitions to be included in the district, and 2) meets the requirements contained in Section 7, it is the City Council's intention that that property shall be incorporated into and become part of the Red Lodge TBID subject to the Red Lodge TBID assessments subject to the process for amending the district provided in §7-12-1111<sub>2</sub> through §7-12-1115 MCA.

- D. Annexed properties subject to the Red Lodge TBID It is the intent of the City Council that, upon annexation, any property or structure, or part thereof, which meets the criteria outlined in Section 7 and voluntarily petitions to be included in the district shall automatically become part of the Red Lodge TBID and subject to assessments as provided herein. Furthermore, it is intended that properties located outside of the city limits of Red Lodge are not included in the Red Lodge TBID and are not subject to assessments however they may contribute donations to the district to assist the district with its mission and goals.
- E. Donations permitted from entities not subject to assessments Pursuant to §7-1-4124 (7) MCA, the Red Lodge TBID is authorized to solicit and accept contributions, bequests, donations, or grants of money, property, services, or other advantages as long as they are not contrary to the public interest.

**Section 5.** Benefited property. The district and territory included within the limits and boundaries described in Section 4 are hereby declared as the Red Lodge TBID, and it is hereby recognized those properties will benefit and be benefitted by the Red Lodge TBID, and as such, will be assessed for the costs of the Red Lodge TBID in accordance with §7-12-1133 (2)(c).

**Section 6.** General character of the services to be performed. It is the City Council's intent that the services to be performed by the Red Lodge TBID will be the funding of all uses and projects for tourism promotion within the City of Red Lodge to be specified in the Red Lodge TBID annual work plan and budget, once developed. The Red Lodge TBID work plan and budget will be developed by a TBID Board of Trustees comprised of property owners (or their legally designated representatives) in the district, and the budget and work plan will be subject to City Council approval annually pursuant to §§7-12-1132 and 7-12-1133 MCA. It is also the intent of the City Council that the services provided through the district will be designed to, among other things, benefit local tourism and lodging businesses within the City of Red Lodge and will include, but not be limited to, the marketing of Red Lodge at convention and trade shows, the marketing of Red Lodge to the travel industry generally; and the marketing of Red Lodge as a viable location for major events.

**Section 7.** Assessment methods; property to be assessed. Pursuant to §7-12-1133 (2)(c) MCA, it is the City Council's intent that all lodging facilities located within the boundaries of the district as outlined in Section 4 will be assessed one dollar (\$1.00) per occupied room night for the costs of operating the Red Lodge TBID. A "lodging facility" is defined as any building or structure containing individual sleeping rooms or suites providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term "lodging facility" includes a facility represented to the public as a hotel, motel, resort, condominium inn, dude ranch, guest ranch, hostel, public lodging house, bed and breakfast facility, or other similar structure or portion thereof which meets these criteria and is located within the boundaries of the district.

**Section 9. Payment of assessments.** The assessments for the costs of maintaining the services provided by the Red Lodge TBID shall be payable, as prescribed in §7-12-1133 (2) (c), MCA.

**Section 10. Duration of district.** The duration of the TBID shall be for a period of 10 years as prescribed in §7-12-1141, MCA.

**Section 11. Notice of passage of resolution of intention.** Upon adoption of this resolution of intention, the City Clerk will publish or cause to be published a notice of the adoption of this resolution of intention as provided in §7-1-2121 MCA in the Carbon County News, a newspaper of general circulation in the county on November 3 and 10, 2011 in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the proposed district listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published. The notice shall only be delivered to property owners who operate lodging facilities in the city who are proposed to be subject to the TBID assessments.

**Section 12. Public hearing; protests.** At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the proposed district and subject to assessment and taxation for the cost and expense of maintaining the Red Lodge TBID may make and file with the City Clerk until 5:00 p.m., on the expiration date of the 15-day period from November 4, 2011 through November 21, 2011 written protest against the proposed TBID, and the City Council will at a regular meeting after the expiration of the fifteen (15) day protest period in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held on November 22, 2011 at 6:00 p.m., in the City Council Chambers, located at 1 South Platt, Red Lodge, Montana 59068.

Pursuant to §7-12-1114 MCA, the City Council will proceed to hear and pass upon all protests at their regular meeting of November 22, 2011. The Council's decision shall be final and conclusive. The City Council may adjourn the hearing from time to time. A protestant shall have the right to withdraw a protest at any time before final action by the City Council. No further action shall be taken upon the proposed district for 1 year if written protest against the passage of the proposed resolution is sufficient.

**Section 13. Governance.** If the City Council establishes the TBID, the city will include a provision in the resolution establishing the district that establishes a board of trustees, appointed by the Mayor with the approval of the City Council in accordance with §7-12-1121 MCA. The TBID board of trustees will be comprised of five (5) owners of property or their legally designated representatives within the district who are subject to TBID assessments.

The Mayor will make the appointments with the advice and consent of the City Council. The Mayor will also designate the first chair of the board of trustees. Terms for the board of trustees will be staggered in accordance with §7-12-1121 (3) and (4). The director of the TBID will be the executive director of the Red Lodge Chamber of Commerce pursuant to MCA §7-12-1121 (1). The Mayor will appoint a non-voting ad hoc liaison to the board from the city to facilitate communication between the district trustees and the city.

**Section 14. Liability insurance required.** Pursuant to §§7-12-1132 and 7-12-1133 MCA, if the TBID is established, the City Council declares its intention to require that the TBID submit an annual work plan and budget for approval by the City Council. Further, pursuant to §7-12-1143, MCA the work plan and budget will not be approved unless the district obtains and provides liability insurance coverage insuring the district, the board and the City of Red Lodge against legal liability for personal injury and property damage in an amount determined to be sufficient by the City Council.

**Section 15. Obligations of the district not obligations of local government.** Pursuant to §7-12-1144, MCA if the TBID is established, the City Council declares that any obligation or debt of any nature of the TBID is not an obligation or debt of the local government that established the district, and in no event is a debt or obligation of the district payable out of any funds or properties of the local government. The debts and obligations of the TBID are payable solely from the funds and properties of the district.

**Section 16. Severability.** If any section, subsection, sentence, clause, phrase or word of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution and each section subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this resolution should be declared invalid or unconstitutional, then the remaining resolution provisions will be in full force and effect.

PASSED and APPROVED by the City Council this 22<sup>nd</sup> day of November, 2011.

FOR THE CITY OF RED LODGE, MONTANA:

By: Brian C. Roat

Brian C. Roat, Mayor

Attest: Debbie Tomicich

Debbie Tomicich, City Clerk