

ORDINANCES
MILES CITY, MONTANA

ORDINANCE NO. 1307

AN ORDINANCE ENACTING CHAPTER 25 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA, RENUMBERING EXISTING PROVISIONS REGARDING AIRPORT ZONING.

WHEREAS, the City Council of the City of Miles City has enacted a revised zoning code in Chapter 24 of the Code of Ordinances of the City of Miles City, Montana, and as a result, is renumbering the portion of the City Code pertaining to Airport Zoning, which is not included in the revised Chapter 24, without changing any content to said Airport Zoning provisions other than numbering and internal references to section numbers from Chapter 24 to Chapter 25, and making no change to content.

BE IT ORDAINED, by the City Council of the City of Miles City, Montana, as follows:

Section 1. That there is hereby enacted a Chapter 25, entitled "Airport Zoning," which rennumbers Chapter 24, Sections 156-190, and internal references to section numbers, but which makes no changes as to content.

CHAPTER 25 - AIRPORT ZONING

Sec. 25-1. - Short title.

This article shall be known and may be cited as Miles City Airport Zoning Ordinance.

Sec. 25-2. - Definitions.

As used in this article, unless the context otherwise requires, the following terms shall have the following meanings:

Airport. Frank Wiley Field (also known as the Miles City Airport).

Airport elevation. Two thousand six hundred twenty-eight feet above mean sea level.

Approach surface. A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in section 25-4. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

Approach, transitional, horizontal, and conical zones. Those zones as described and set forth in section 25-3.

Board of adjustment. A board consisting of three members appointed by the city council as provided for in MCA 67-6-206.

Conical surface. A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to one for a horizontal distance of 4,000 feet.

Hazard to air navigation. An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

Height. For the purpose of determining the height limits in all zones set forth in this article and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

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Horizontal surface. A horizontal plane 150 feet above the established airport elevation, the perimeter of which plane coincides with the perimeter of the horizontal zone.

Nonconforming use. Any preexisting structure, object of natural growth, or use of land which is inconsistent with the provisions of this article or amendment thereto.

Obstruction. Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in section 25-4.

Person. An individual, firm, partnership, corporation, company, association, joint stock association, or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.

Primary surface. A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in section 25-3. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.

Structure. An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, or overhead transmission lines.

Transitional surfaces. These surfaces extend outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces.

Tree. Any object of natural growth.

Utility runway. A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds of maximum gross weight and less.

Visual runway. A runway intended solely for the operation of aircraft using visual approach procedures.

• **Sec. 25-3. - Airport zones; established and defined.**

In order to carry out the provisions of this article, there are hereby created and established certain zones which includes all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the Miles City Airport. Such zones are shown on the FAR Part 77 Airspace Drawing of the current Miles City Airport Plan drawing set, which is attached to this article and made a part hereof. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive heights limitation. The various zones are hereby established and defined as follows:

(1)

Approach surface zone. The inner edge of this approach zone coincides with the width of the primary surface. The approach zone expands outward uniformly to a width as shown on the FAR Part 77 Airspace Drawing of the current Miles City Airport Plan drawing set. Its centerline is the continuation of the centerline of the runway.

(2)

Transitional zones. The transitional zones are the areas beneath the transitional surfaces.

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(3) *Horizontal zone.* The horizontal zone is established by swinging arcs of 10,000 feet radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs.

(4) *Conical zone.* The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a horizontal distance of 4,000 feet.

• **Sec. 25-4. - Height limitations.**

Except as otherwise provided in this article, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this article to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

- (1) *Approach surface zone.* Slopes 34 feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
- (2) *Transitional zone.* Slope seven feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 2,628 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface.
- (3) *Horizontal zone.* Established at 150 feet above the airport elevation or at a height of 2,778 feet above mean sea level.
- (4) *Conical zone.* Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.
- (5)

Excepted height limitations. Nothing in this article shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to 50 feet above the surface of the land, except that no new construction or growth will be allowed to penetrate the transitional surface.

• **Sec. 25-5. - Use restrictions.**

(a)

Notwithstanding any other provisions of this article, no use may be made of land or water within any zone established by this article in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

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- (b) No use may be made of land or water within any zone established by this article which receives an objectionable determination in response to the notice required to be filed under Federal Aviation Regulations Parts 157 or Part 77.

Sec. 25-6. - Nonconforming uses.

- (a) *Regulations not retroactive.* The regulations prescribed by this article shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this article, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of the ordinance from which this article derives, and is diligently prosecuted.

- (b) *Marking and lighting.* Notwithstanding the preceding provision of this section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the city council, to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated and maintained at the expense of the city through its airport commission.

Sec. 25-7. - Permits.

- (a) *Future uses.* Except as specifically provided in a, b and c hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit thereof shall have been applied for and granted. Each application for a permit shall indicate the purposes for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this article shall be granted unless a variance has been approved in accordance with subsection 25-7(d).

In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when, because of terrain, land contour or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.

In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height limits established by this article except as set forth in subsection 25-4(5).

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- (b) *Existing uses.* No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard of air navigation than it was on the effective date of this article or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.
- (c) *Nonconforming uses abandoned or destroyed.* When the city council determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.
- (d) *Variances.* Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this article, may apply to the board of adjustment for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this article.

- (e) *Obstruction marking and lighting.* Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this article and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the board of adjustment, this condition may be modified to require the owner to permit the city council, at its own expense, to install, operate, and maintain the necessary markings and lights.

Sec. 25-8. - Enforcement.

It shall be the duty of the city council, to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the city council, upon a form published for that purpose. Applications required by this article to be submitted to the city council shall be promptly considered and granted or denied. Application for action by the board of adjustment shall be forthwith transmitted by the city council.

Sec. 25-9. - Board of adjustment.

- (a) There is hereby created a board of adjustment to have and exercise the following powers: (1) to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the city council, in the enforcement of this article; (2) to hear and decide special exceptions to the terms of this article upon which such board of adjustment under such article may be required to pass; and (3) to hear and decide specific variances as provided under subsection 25-7(d).
- (b) The board of adjustment shall consist of five members appointed by the city council and each shall serve for a term of three years until a successor is duly appointed and qualified. Of the members first appointed, two shall be appointed for a term of one year, two for a term of two years, and one for a term of three years. Members shall

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be removable by the appointing authority for cause, upon written charges, after a public hearing. No member of the city council may be a member of the board of adjustment.

(c)

The board of adjustment shall adopt rules for its governance and in harmony with the provisions of this article. Meetings of the board of adjustment shall be held at the call of the chairperson and at such other times as the board of adjustment may determine. The chairperson, or in the absence of the chairperson, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment shall be public. The board of adjustment shall keep minutes of its proceedings showing the vote of each member upon each question; or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official action, all of which shall immediately be filed in the office of the city clerk and shall be a public record.

(d)

The board of adjustment shall make written findings of facts and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming, or modifying any order, requirement, decision, or determination which comes before it under the provisions of this article.

(e)

The concurring vote of four of the members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of the city council, or to decide in favor of the applicant on any matter upon which it is required to pass under this article, or to effect any variation to this article.

Sec. 25-10. - Appeals.

(a)

Any person aggrieved, or any officer, department, board or bureau of the city affected, by any decision made in the administration of the article, may appeal to the board of airport hazard adjustment.

(b)

All appeals hereunder must be taken within a reasonable time as provided by the rules of the board of airport hazard adjustment, by filing with the city a notice of appeal specifying the grounds thereof. The city, shall forthwith transmit to the board of airport hazard adjustment all the papers constituting the record upon which the action appealed from was taken.

(c)

An appeal shall stay all proceedings in furtherance of the action appealed from unless the city, certifies to the board of airport hazard adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would in the opinion of the city cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a restraining order, which may be granted by the board of airport hazard adjustment or by a court of record on application, with notice to the city and on due cause shown.

(d)

The board of airport hazard adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

(e)

The board of airport hazard adjustment may, in conformity with the provisions of this article, reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

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• **Sec. 25-11. - Judicial review.**

Any person or persons, jointly or severally, aggrieved, or any taxpayer or any officer, department, board or bureau of the city affected, by any decision of the board of airport hazard adjustment, may appeal to the appropriate court of record as provided for in MCA 76-2-327.

• **Sec. 25-12. - Penalties.**

(a)

Any person who violates any provision of this article is guilty of a misdemeanor and punishable by a fine not to exceed \$500.00, imprisonment in the county jail for a period not to exceed six months, or both. Each day a violation continues to exist constitutes a separate offense.

(b)

The city may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this article.

• **Sec. 25-13. - Conflicting regulations.**

Where there exists a conflict between any of the regulations or limitations prescribed in this article and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

• **Secs. 25-14 through 25-45. - Reserved.**

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Section 2. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 25th day of October, 2016.

ATTEST:


Lorrie Pearce, City Clerk


John Hollowell, Mayor

FINALLY PASSED AND ADOPTED this 9TH day of November, 2016.

ATTEST:


Lorrie Pearce, City Clerk


John Hollowell, Mayor

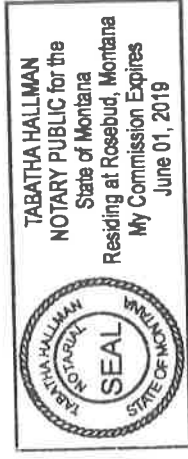
Affidavit of Publication

STATE OF MONTANA }
County of Custer } ss.

Mary Rose Bovee, being duly sworn on her oath, says that she has been the principal clerk of the printer of the MILES CITY STAR, a daily newspaper of general circulation, printed and published at Miles City, in said County and State. **City of Miles City, Legal Notice.**
Ordinance Number 1307. A printed and true copy which, cut from the columns of said newspaper, is hereto attached, and made a part hereof, was printed and published in said newspaper, in the regular and entire issue of every number of the paper during the period and time of publication, on the following dates,
October 28, and November 4, 2016.

Signed Mary Rose Bovee
Subscribed and sworn to before me this 28th
day of October, 2016

Tabatha Hallman
Tabatha Hallman, Notary Public for the state of Montana, residing at Rosebud. My Commission Expires June 1, 2019.



LEGAL NOTICE
NOTICE IS HEREBY GIVEN that the City Council of the City of Miles City at a Regular Council Meeting held on Tuesday, October 25, 2016 at 7:00 p.m., passed on first reading the following Ordinance:
ORDINANCE 1307: AN ORDINANCE ENACTING CHAPTER 25 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA, R E N U M B E R I N G EXISTING PROVISIONS REGARDING AIRPORT ZONING.
The above Ordinance is on file and available for public inspection at the City Clerk's Office at City Hall, 17 S. 8th Street, Miles City, Montana. You are further notified that objections to the final adoption of the Ordinance will be heard by the City Council at its regularly scheduled meeting in the Council Chambers at City Hall, 17 S. 8th Street, Miles City, Montana, on Tuesday, November 9, 2016 at 7:00 p.m.
For information or questions you may contact the City Clerk at 234-3482.
BY ORDER OF
THE CITY COUNCIL
Lorrie Pearce
City Clerk
(Published October 28, and November 4, 2016)
MNAXLP