

## ORDINANCE NO. 1222

**AN ORDINANCE AMENDING SECTIONS 24-5 AND 24-11 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA AND ENACTING A NEW SECTION 24-69 TO CONFORM THE ZONING PROVISIONS TO THE PROVISIONS OF ORDINANCE NO. 1205, THE MILES CITY FLOODPLAIN ORDINANCE AND PROVIDING FOR A HEARING THEREON.**

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

**Section 1.** Section 24.5 of the Code of Ordinances of the City of Miles City, Montana is amended by adding thereto the following definitions, in alphabetic order of the existing definitions therein:

“*Floodway*’ – The channel of a stream and the adjacent overbank areas that must be reserved in order to discharge a base flood without cumulatively increasing the water surface elevation more than one-half (1/2) foot.

‘*Existing structure*’ - Any structure in place prior to the passage of this Ordinance.”

**Section 2.** Section 24-11 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

**“Sec. 24 - 11. Nonconforming Uses.**

- (a) Any use which is lawful at the time of adoption of this chapter, but would be prohibited, regulated or restricted under the terms of this chapter or future amendments, shall be known as a nonconforming use.
- (b) Expansion of nonconforming use. The right to expand nonconforming uses to meet natural expansion is necessary to protect the original property interest in the tract and is essentially a constitutional right protected by the due process of law. However, this rule, like all other rules, is subject to limitations. More specifically, the expansion must be reasonable, must not expand to create a new nonconforming use, must be only that which is absolutely necessary to accommodate the expansion of the nonconforming use, and should be permitted only to the extent that it is not inconsistent with public interest.
- (c) A building in which a nonconforming use is located may be repaired or reconstructed without structural alteration, to the extent not greater than 50 percent of the replacement costs of the building, exclusive of foundations.
- (d) If a nonconforming use is discontinued for a period of 12 consecutive months, any future use of such building or premises shall conform to the provisions of this chapter.
- (e) If a building housing a nonconforming use is destroyed to the extent of 50 percent or more of its replacement cost, said use shall be discontinued.
- (f) No permanent structure, be it auxiliary or residential, that would impede, divert, or direct the flow of water to from within the boundaries of the floodway to outside of the boundaries of the floodway shall be allowed or permitted as a nonconforming use.”

**Section 3.** There is enacted a new Section 24.69 to read as follows:

Sec. 24-69. Uses Under Chapter 5 of the Miles City, Montana Floodplain Ordinance (Ord. No. 1205)

- (a) *Intent.* It is the intent of this Section to replace existing Zoning Ordinance regulations with the Specific Standards set forth in Chapter 5 of the Miles City Floodplain Ordinance (Ord. No. 1205). To the extent that any of the provisions of Title 24 of this Code irreconcilably conflict with the provisions of the Miles City Floodplain Ordinance, the provisions Miles City Floodplain Ordinance shall prevail.
- (b) *Uses Allowed Without Permit* – The following open space uses shall be allowed without a permit anywhere within the floodway, provided that such uses are not prohibited by any other resolution or statute, do not require structures other than portable structures, do not require alteration of the floodplain such as fill, excavation or permanent storage of materials or equipment, do not require large scale cleaning of the riparian vegetation within fifty (50) feet of the mean high water mark, will not cause flood losses on other land or to the public:
1. Accessory uses such as loading and parking areas;
  2. Private and public recreational uses such as picnic grounds, parks, wildlife management and natural areas, fishing areas and hiking trails;
  3. Residential uses such as lawns, gardens, parking and play areas, including community-wide family gardening projects not of a commercial nature;
  4. Fences, except permanent fences crossing channels;
  8. Recreational vehicle use provided that they be on the site for fewer than 180 consecutive days or be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system with wheels intact, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

**Section 4.** A public hearing shall be held upon this Ordinance on the 12th day of July, 2011 at 7:00 p.m. in the City Hall Conference Room at City Hall, 17 S. Eighth Street, Miles City, Montana. The City Clerk shall give notice of such hearing at least 15 days prior to the date of such hearing by publication in the Miles City Star, in accordance with §76-2-303 and §76-2-305 MCA.

**Section 5.** This amendment shall become effective thirty (30) days after its final passage.

Said ordinance read and put on its passage this 14th day of June, 2011.

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Joe Whalen, Mayor

ATTEST:

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Rebecca Stanton, City Clerk

**FINALLY PASSED AND ADOPTED BY THE AFFIRMATIVE VOTE OF  
AT LEAST TWO-THIRDS OF THE PRESENT AND VOTING MEMBERS  
OF THE CITY COUNCIL OF THE CITY OF MILES CITY THIS 12TH  
DAY OF JULY, 2011.**

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Joe Whalen, Mayor

ATTEST:

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Rebecca Stanton, City Clerk