

## ORDINANCE NO. 1230

**AN ORDINANCE AMENDING THE DEFINITION OF “KENNEL”,  
DEFINING “ANIMAL RESCUE SHELTERS”, PROVIDING A  
PERMITTING PROCESS THEREFOR, REGULATING THE  
OPERATIONS THEREOF, DESIGNATING ANIMAL RESCUE  
SHELTERS AS A PERMITTED USE IN CERTAIN ZONES, PROVIDING  
FOR A HEARING THEREON, AND PROVIDING AN EFFECTIVE DATE  
THEREOF.**

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

**Section 1.** Section 4-26 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

**“Sec. 4-26. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandon* means to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care or to leave the animal in such a location as to present immediate danger to the animal or cause the animal to become a public charge.

*Adequate exercise* means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, breed and physical condition of the animal;

*Adequate food* means access to and the provision of food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, physical condition, and breed of each animal; is provided in a clean and sanitary manner, and is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, breed, age and physical condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring state of hibernation or fasting normal for the species.

*Adequate shelter* means protection from injury, rain, sleet, snow, hail, wind, direct sunlight, the adverse effects of heat and cold; enables each animal to be clean and dry, except when detrimental to the species, and provides solid surface that is large enough for the animal to lie in a normal manner and can be maintained in a sanitary manner inside that shelter.

*Adequate water* means provision of and access to clean, fresh, potable water of a drinkable temperature that is provided in a suitable manner, in sufficient volume, and at suitable intervals, but at least once every 12 hours, to maintain normal hydration for the age, species, breed, physical condition, of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring state of hibernation or fasting normal for the species; is provided in a clean, durable receptacle that is accessible to each animal and placed so as to minimize contamination of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.

*Animal* means both male and female.

*Animal Rescue Shelter* means a facility, operating under a permit as provided for herein, in which dogs, cats, or both, that have been abandoned, strayed, removed by judicial proceedings, or voluntarily surrendered are placed, held, and cared for pending return to the lawful owner, placement for adoption, or

euthanasia by humane means. Included within this definition are facilities commonly referred to as animal fostering facilities.

*Animal Control Officer* means all Miles City police officers as well as all duly appointed animal control officers,

*At large* means off the premises of the owner and not under the control of the owner or any other person.

*Exotic animal* means an wild or other animal which is not tame by nature and includes, but is not limited to, raccoon, fox, skunk, beaver, otter, wolf, bear, raptor, alligator, crocodile, monkey [or other simian], member of the feline species other than domestic cats, member of the canine species other than domestic dog.

*Kennel* means any establishment, other than an animal rescue shelter, wherein or whereon four or more dogs greater than 4 months of age are kept.

*Owner* means any person owning, keeping or possessing a dog, cat or other domestic or household pet, [or other animal], including any person, group of persons or entity having temporary or permanent custody of, sheltering or having charge of, harboring, exercising control over, or having property rights to any animal..

*Potentially vicious dog* means any dog that in the absence of intentional provocation:

- (1) While off the owner's property, chases or approaches a person in a menacing fashion or apparent attitude of attack or inflicts bodily injury to a person or animal; or
- (2) While on the owner's property causes bodily injury to a person lawfully on the property; or
- (3) While off the owner's property kills a domestic animal.
- (4) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.

*Poundmaster* means the animal control officer appointed by the mayor pursuant to Section 4-67 of this code;

*Under control* means within a vehicle of the owner or restrained by a substantial leash of not over six feet in length;

*Vicious Dog* means any dog that in the absence of intentional provocation:

- (1) Inflicts serious bodily injury that requires medical attention to a person on public or private property; or
- (2) Is involved in a continuous sustained attack upon a person, not allowing the victim any means of escape, regardless of the extent of injury or defensive action required; or
- (3) Is previously found to be potentially dangerous and while on or off the owner's property chases or approaches a person in a menacing fashion or apparent attitude of attack or inflicts bodily injury to a person or any animal;
- (4) Inflicts injury to a person on public or private property, which injury results in the death of the person.
- (5) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.”

**Section 2.** There is added a Section 4-45 of the Code of Ordinances of the City of Miles City, Montana to read as follows:

**“Sec. 4-45. Animal rescue shelter permits.**

- (a) Any person or entity desiring to establish an animal rescue shelter within the city limits of the City of Miles City shall submit to the City Clerk an application for a permit for such facility. The application

shall be in a form provided by the Clerk's office and shall provide the following information.

1. Name of permit applicant, address of applicant, address of shelter location, if different, and telephone number of applicant;
2. Verification of current rabies vaccination for each animal held in the facility;
3. A statement that the applicant will not violate any of the provisions set out in this ordinance.

(b) Upon the filing of a completed application, the application shall be placed before the City Council for its consideration and action. The Clerk shall cause notice to be given by mail, as provided by 7-1-4129 MCA, to all owners of property within two hundred fifty 250 feet of the exterior boundaries of the property for which the permit is sought.

(c) In considering whether to grant such permit, the City Council shall consider the following criteria:

1. An animal rescue shelter shall not have more than eight (8) animals on the premises at any time. Animals owned by the permit holder are included within this 8 animal limit;
2. Animal rescue shelters shall not be a for-profit enterprise;
3. The permit holder for an animal rescue shelter shall not knowingly accept into the shelter animals from any locations outside of Custer County, Montana;
4. When the animals are not under the actual physical control of the permit holder, the permit holder shall provide an appropriate fenced area in which the animals may be placed for exercise; and
5. The permit holder must be compliant with all animal control ordinances.

(d) The granting of a permit shall require the affirmative vote of two-thirds of the membership of the City Council.

(e) Revocation of permit.

1. The mayor shall revoke an animal rescue shelter permit upon:
  - a. refusal of the permit holder to allow inspection of the animal shelter premises;
  - b. three (3) convictions of the permit holder for violations of any of the provisions of Chapter 4 of the Miles City Code of Ordinances in a twenty-four month period;
  - c. the permit holder using the permitted facility to dispose of or to find homes for surplus puppies and breeding stock; or
  - d. any other violation of the provisions of this ordinance.
2. The mayor shall give notice to the permit holder of any revocation. The notice shall be in writing, shall specify the deficiencies or violations, advise the violator/permittee of the right to appeal, and shall be mailed by certified mail, return receipt requested, or personally served. The permittee shall have ten (10) days to appeal the revocation to the City Council. The appeal shall be filed in writing with the City Clerk. The Mayor shall cause the matter to be placed on the first available agenda. The applicant shall be notified by certified mail or personally served with notice of the date of the council meeting at least three (3) days prior to the hearing. The

matter shall be considered by the council after the appellant has had an opportunity to be heard in person or by counsel at the regular council meeting in which the matter appeared on the agenda.

- (f) State licensed veterinarian clinics shall be exempt from this ordinance.”

**Section 3.** Section 24-5 of the Code of Ordinances of the City of Miles City is amended to read as follows:

“Sec. 24-5. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The word "building" includes the word "structure," and the word "lot" includes the words "plot" and "parcel"; the word "signature" includes the word "mark" when the person cannot write. The word "shall" is mandatory; the word "may" is permissive.

*Accessory building* means a subordinate building or portion of the main building which is located on the lot occupied by the main building, and the use of which is clearly incidental to the use of the main building.

*Alley* means a public thoroughfare not over 20 feet wide.

*Animal Rescue Shelter* means a facility in which dogs, cats, or both, that have been abandoned, strayed, removed by judicial proceedings, or have been voluntarily surrendered are housed and cared for pending return to the lawful owner, placement for adoption, or euthanasia by humane means.

*Appearance review.* The board of adjustment may provide for a review of any new building or alteration at the request of the building inspector in regard to compatibility of external design with existing structures and location with respect to topography and finished grade elevation.

*Block* means the property fronting on one side of any street, avenue or boulevard between the two nearest of any of the following, intersecting such street, avenue or boulevard: street, avenue, boulevard, park, waterway or railroad right-of-way.

*Board of adjustment* means the body authorized by the city council to hear appeals on the enforcement of the provisions of this chapter and to grant variances.

*Boardinghouse* means a building or premises where meals are served for compensation for five or more persons, but not exceeding 20 persons.

*Building* means a structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels.

*Building height* means the vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest

point of a flat roof; and to the average height between the finished lot grade at the front of a building and ridge of a gable, hip or gambrel roof.

*Certification of zoning compliance* means a certificate stating compliance with zoning district regulations.

*Clear site triangle* means a triangle area formed by the intersection of curblines and a straight line joining said curblines at points which are 30 feet distant from the point of intersection, measured along said curblines. If curb does not exist, the city engineer will designate such lines.

*Conditional use* means any use for which the zoning commission shall set specific conditions, all of which must be met prior to the approval of said use in the district.

*Corner lot* means a lot situated at the junction of and fronting on two or more streets, and having a width and depth as shown on the plot. Its width dimension is its front and its depth dimension its side, for the purpose of this chapter. Where there is doubt or dispute on this point, the decision of the building inspector shall control.

*Curb level* means the level established for the curb in front of a building, measured at the center of such front. Where no curb level has been established, the city engineer shall establish such curb level or its equivalent for the purpose of this chapter.

*Depth of lot* means the mean horizontal distance between the front and the rear lot lines.

*District* means a section or sections of the city and the designated area for which the regulations governing the use of buildings and premises, the height of buildings, the size of yards and the intensity of use are uniform.

*Dwelling, high-rise* means a dwelling, including a multi-family dwelling, that is three stories or more in height.

*Dwelling, mobile home or mobile home* means any dwelling unit larger than 256 square feet in area which is either wholly or in substantial part manufactured at an offsite location, and any movable or portable dwelling over 32 feet in length and over eight feet wide, constructed to be towed on its own chassis and designed without a permanent foundation for yearround occupancy, which includes one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or of two or more units separately towable but designed to be joined into one integral unit, as well as a portable dwelling composed of a single unit.

*Dwelling, multifamily* means a residential building designed for and occupied exclusively by more than two families.

*Dwelling, single-family* means a detached residential living unit, other than a mobile home, designed for and occupied by one family.

*Dwelling, two-family* means a residential building designed for and occupied exclusively by two families.

*Easement* means a vested or acquired right to use land, other than as a tenant, for a specific purpose; such right being held by someone other than the owner who holds the title to the land.

*Family* means one or more persons occupying the premises and living as a single housekeeping unit.

*Front street* means the street parallel to the alley. In those blocks with a "T" alley, the longer length of alley shall be the alley referred to.

*Frontage* means front yards of buildings which are so placed that a front yard is entirely unoccupied by any building or part thereof having a depth of not less than 25 feet; in blocks where buildings have already been erected having a front yard of less than 25 feet, the depth of the front yard for any new building may be equal to the depth of the nearest adjacent building, provided that no front yard shall have a depth of less than 15 feet, and provided, further, that the front yard for all buildings on corner lots shall not be less than 25 feet deep.

*Hotel* means a building or premises where lodging is provided, with or without food, and open to transient guests.

*Improvements* means street grading and surfacing with or without curbs and gutter, sidewalks, crosswalks, water mains, sanitary and storm sewers, culverts, bridges, streets and trees.

*Interior or inside lot* means a lot other than a corner lot.

*Junkyard* means a tract of land or structure, or part thereof, used primarily for the collecting, storage and sale of scrap or discarded material, or for the collecting, dismantling or storing and salvage of machinery or vehicles not in running order or for the sale of parts thereof.

*Living unit* means a residential unit providing complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking and sanitation.

*Lodginghouse* means a building or premises where lodging is provided for compensation for five or more persons, but not exceeding 20 persons.

*Lot* means land occupied or to be occupied by one building and accessory buildings and uses and including open spaces required under this chapter. A lot may be land recorded as such on the records of the county clerk and recorder.

*Lot, depth of* means the mean horizontal distance between the front and rear lot lines.

*Lot frontage.* The front of a lot shall be construed to be the portion nearest the street facing the narrow width of the lot. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage.

*Lot lines* means the lines bounding a lot as defined in this section.

*Lot width* means the distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the rear of the required front yard.

*Mobile home district* means the areas designated by the city council on the district zoning map for development of mobile home residential dwelling units.

*Mobile home park* means a tract of land designed and developed to accommodate two or more mobile homes, each occupying a portion of the site on a purchase, lease or rental basis, and each provided with the necessary utilities and other amenities so that the total development serves as a suitable environment for longterm residential occupancy. Such parks are regulated by the Montana Subdivision and Platting Act.

*Motor vehicle* means any vehicle requiring a motor vehicle license by the state.

*Nonconforming use* means a use of a building or premises that does not conform with the regulations of the use district in which it is situated.

*Permitted use* means any use which complies with the requirements of a zoning district.

*Plat* means any map, plan or chart of a tract of land or subdivision indicating the location and boundaries of individual properties.

*Private garage or carport.* A private garage or carport is one which is accessory to a building used for private residential purposes, single-family, multiple-family or apartment, as those terms are used and defined in this chapter. If it is a multiple-family dwelling for more than three families, or an apartment house, it may have a garage of not more than one-car capacity for each family. No business of any kind or character shall be conducted or carried on in a private garage or carport.

*Public garage* means any garage not included within the definition of a private garage.

*Public utility* means any business which furnishes the general public with telephone service, telegraph service, electricity, natural gas or water; and any other business so affecting the public interest as to be subject to the supervision or regulation by an agency of the state.

*Residential districts* means the areas designated by the city council on the district zoning map for development of residential dwelling units.

*Retail business* means a business engaged in the selling of merchandise.

*Right-of-way* means the area, either public or private, over which the right of passage exists. The right-of-way shall not be considered as land area when computing lot size.

*Setback* means the line within a property defining the required minimum distance between any structure or use and the adjacent right-of-way or property line of any lot.

*Street* means a way for vehicular traffic designated as a street, highway, boulevard, thoroughfare, parkway, throughway, avenue, road or court on the official records and maps.

- (1) *Arterial streets and highways* means those which are primarily for fast or heavy traffic.
- (2) *Collector streets* means those which carry traffic from minor streets to the major system of arterial streets and highways, including the principal entrance streets of a residential development and streets for circulation within such a development.
- (3) *Marginal access streets* means minor streets which are parallel to and adjacent to arterial streets and highways, and which provide access to abutting properties and protection from through traffic.
- (4) *Minor streets* means those which are used primarily for access to abutting property.

*Structural alterations* means any change in the supporting members of a building such as bearing walls, partitions, columns, beams or girders, excepting such alterations as may be required for the safety of the building (building permit regulations).

*Structure* means anything constructed or erected, the use of which requires permanent location on the ground, or attached to something having a permanent location on the ground.

*Subdivision* means a division of land so divided, which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased or otherwise conveyed, and shall include any resubdivision, and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles or mobile homes. A subdivision shall comprise only those parcels less than 20 acres which have been segregated from the original tract, and the plat thereof shall show all such parcels, whether contiguous or not; provided, however, condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act are exempt from the provisions of the act.

*Townhouse* development means a multiple-unit residential structure with each unit under independent ownership, and where the owner of each unit also owns the parcel of land upon which the unit is situated and may own the front and/or rear yard adjoining the unit, and the owner of an end unit may own the side yard adjoining such unit. Each unit shall be provided with separate utility connections and shall be provided with at least two separate and private outdoor access doors.

*Tract* means a plot, piece or parcel of land, other than a lot, which is recorded in the office of the clerk and recorder of the county.

*Use* means the specific purpose for which land or a building is used.



*Variance* means a relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, the literal enforcement of this chapter would result in unnecessary and undue hardship.

*Vehicle*. See Motor vehicle.

*Yard* means a space on the same lot with the principal building or structure, open, unoccupied and unobstructed by buildings or structures from the ground upward.

- (1) *Yard, front* means a yard extending across the full width of the lot from the side lot lines, the depth of which is the least distance between the front lot line and the front building line.
- (2) *Yard, rear* means a yard extending across the full width of the lot from the side lot lines, the depth of which is the least distance between the rear lot line and the rear of the principal building.
- (3) *Yard, interior* means a yard extending from the rear line of the required front yard to the rear lot line, the depth of which is the least distance from the side lot line.

*Zoning commission* means the body appointed by the city council pursuant to state law, recommending zoning boundaries, appropriate regulations and changes thereto.

*Zoning district map* means the map showing the zoning districts of the city officially adopted by the city council”.

Section 4. There is added a Section 24-20(b) of the Code of Ordinances of the City of Miles City, Montana to read as follows

“(b) **Regulations for Animal Rescue Shelters, Animal Foster Care**

- (1) The keeping of a total of up to eight (8) dogs, cats, or a combination of both, not exceeding eight (8) animals, for the purpose of operating an animal rescue shelter shall be allowed in the following residential districts with the Site Plan Review by the Planning Board and City Council approval: RA, RB, MHA, and SR.
- (2) For residential zones, any personal dogs or cats kept as pets by the operator of the facility shall reduce the allowed number of sheltered animals by a count of one animal for each dog or cat that is being housed on the same premise and kept as a pet.
- (3) An animal shelter in a residential zone shall not be located any closer than 3,000 feet from another existing animal rescue shelter.
- (4) In the following zones animal rescue shelters shall be allowed on a case by case basis with Site Plan Review by the Planning Board and City Council Approval: OS, AG, GC, LC, and HC.
- (5) For purposes of determining the total number of allowed animals, litters under 4 months of age shall count the same as one adult animal. For rescued animals that give birth after being rescued, animals under the age of four months shall not be counted in the total. For shelters being operated out of a single-family home, only one litter at a time shall be allowed.

(6) A permit is required and the permit holder shall comply with all other applicable control regulations.”

**Section 5.** Section 24-53(b) of the Code of Ordinances of the City of Miles City is amended to read as follows:

“(b) Permitted uses.

- (1) Single-family dwellings.
- (2) Multifamily dwellings not in excess of four families.
- (3) Townhouse dwelling units not in excess of four families.
- (4) Public schools.
- (5) Public parks, buildings and playgrounds.
- (6) Churches.
- (7) Home occupations as per this chapter.
- (8) Accessory uses.
- (9) Bed and Breakfast
- (10) Animal Rescue Shelters per Section 24-20(b)”

**Section 6.** Section 24-54(a) of the Code of Ordinances of the City of Miles City is amended to read as follows:

“(a) Permitted uses.

- (1) Multifamily dwellings and condominiums not in excess of an eight-plex.
- (2) Single-family dwellings.
- (3) Public schools.
- (4) Public parks, buildings and playgrounds.
- (5) Churches.
- (6) Home occupations as per this chapter.
- (7) Accessory uses.
- (8) Townhouse developments not in excess of an eight-plex: regulations governing the development of townhouses are set forth at section 24-58
- (9) Animal Rescue Shelters per Section 24-20(b)”

**Section 7.** Section 24-55(b) of the Code of Ordinances of the City of Miles City is amended to read as follows:

“(b) Permitted uses.

- (1) All uses in residential districts A and B.
- (2) Mobile homes.
- (3) Accessory uses.
- (4) Home occupations as per this chapter.
- (5) Animal Rescue Shelters per Section 24-20(b)”

**Section 8.** Section 24-59(b) of the Code of Ordinances of the City of Miles City is amended to read as follows:

“(b) Permitted uses.

- (1) All general businesses and services.
- (2) Theatres, lodges and assembly facilities.
- (3) Churches.
- (4) Multifamily dwellings, except townhouse developments.
- (5) Multifamily dwellings in combination with uses listed in subsection (b)(1), (2) or (3) of this section.
- (6) Animal Rescue Shelters per Section 24-20(b)”

**Section 9.** Section 24-60(b) of the Code of Ordinances of the City of Miles City is amended to read as follows:

“(b) Permitted uses.

- (1) All local businesses and services.
- (2) Neighborhood lodges and assembly facilities, excluding indoor and outdoor theatres.
- (3) Churches.
- (4) Animal Rescue Shelters per Section 24-20(b)”

**Section 10.** Section 24-61(b) of the Code of Ordinances of the City of Miles City is amended to read as follows:

“(b) Permitted uses.

- (1) All heavy commercial businesses and services.
- (2) Related offices.
- (3) Animal Rescue Shelters per Section 24-20(b)”

**Section 11.** Section 24-63(b) of the Code of Ordinances of the City of Miles City is amended to read as follows:

“(b) Permitted uses.

- (1) Playfields.
- (2) Bicycling.
- (3) Pedestrian trails.
- (4) As a buffer zone between zoning districts.
- (5) As an easement for public utilities.
- (6) As protection of the designated floodway.
- (7) Cemeteries.
- (8) Animal Rescue Shelters per Section 24-20(b)”

**Section 12.** Section 24-64(b) of the Code of Ordinances of the City of Miles City is amended to read as follows:

“(b) Permitted uses.

- (1) Uses permitted in residential district A.
- (2) Mobile homes.
- (3) Accessory buildings.
- (4) Stables.
- (5) Gardening.
- (6) Animal Rescue Shelters per Section 24-20(b)”

**Section 13.** Section 24-65(b) of the Code of Ordinances of the City of Miles City is amended to read as follows:

“(b) Permitted uses are as follows:

- (1) Grazing.
- (2) Keeping poultry.
- (3) Breeding of animals.
- (4) Growing of crops.
- (5) Pasturing livestock.
- (6) Dairies and processing of dairy products.
- (7) Animal Rescue Shelters per Section 24-20(b)”

**Section 14.** A public hearing shall be held upon this Ordinance on the 12th day of June, 2012 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 15.** This ordinance and the amendments contained herein shall become effective thirty (30) days after its final passage.

Said ordinance read and put on its passage this 22nd day of May, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Rebecca Stanton, City Clerk

**FINALLY PASSED AND ADOPTED** this 12th day of June, 2012.

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Mayor

ATTEST:

\_\_\_\_\_  
Rebecca Stanton, City Clerk