

## MILES CITY ZONING CODE AMENDMENTS

<b>Ordinance Number</b>	<b>Adoption Date</b>	<b>Subject</b>
1252	6/11/2013	Historic Mixed Use district & various city-wide updates
1230	06/12/2012	Animal Rescue Shelters
1227	04/24/2012	Keeping of Chickens
1223	06/14/2011	Allowing Bed and Breakfast and related signage
1222	06/14/2011	Conformance with newly adopted Floodplain Ordinance
1192	06/23/2009	Amend Section 24-58 regarding Garages in Residential zones.
1166	02/13/2007	Adopt new zoning classifications for C Residential and Light Industrial and add definition for Dwelling, High-rise.
1163	07/25/2006	Adopt regulations for Antennas, Antenna Support Structures, and Wireless Communication Facilities.
1162	06/27/2006	Setting jurisdiction two miles beyond the corporate limits.
1143	05/27/2003	Adopt a new zoning classification for an Airport district
1142	05/27/2003	Adopt a new zoning classification for an Airport Influence Area district.
1092	03/24/1998	Adopt new fees for Zoning Amendment.
1014	05/13/1991	Adopt a new zoning classification for a Medical Campus District.
1001	03/27/1990	<u>Replaced</u> by Ord. 1192. Change detached garage size.
981	08/13/1988	Amend Residential District A to allow Dwellings containing 3 and 4 units.
926	12/27/1983	Setbacks for General Commercial, GC Zone
924	11/08/1983	Change the notice for zoning hearing from 15 days to 10 days.
893	09/22/1981	Allowing and Establishing regulations for Townhouses
883	02/24/1981	General changes to multiple sections.

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|-------|------------|---|
| 864   | 11/13/1979 | General Changes to List of Zone Classifications, Home Occupation and GC zone regulations.           |
| 839   | 12/12/1978 | Extending zoning to 1 mile & Adding Agricultural District Zone                                      |
| 823   | 03/14/1978 | Home Occupations.   |
| 822.5 | 04/11/1978 | 3 different Commercial districts created instead of one/minor changes to R-A zone.                  |
| 813   | 08/09/1977 | Add definition for “front street”, change residential requirements concerning setbacks and garages. |
| 811   | 05/24/1977 | Establish Zoning for Southgate Meadows.   |
| 796   | 06/08/1976 | Replacing previous Miles City Zoning Ordinance.   |
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## **ARTICLE I. IN GENERAL**

### **Section 24-1. Title of chapter**

The provisions of this chapter shall be designated as the Miles City Zoning Ordinance, and may be cited as such.

### **Section 24-2. Statutory Authority**

The zoning regulations set forth in this chapter are adopted under the authority of state law. (MCA 76-2-301)

### **Section 24-3. Territorial jurisdiction**

The jurisdiction of this chapter shall include all land within the corporate limit of the city and within two miles beyond the corporate limits.

### **Section 24-4. Purpose of chapter; interpretation of chapter**

*(a)* Such regulations shall be made in accordance with the growth policy and designed to secure safety from fire, and other dangers; to promote public health, public safety, and the general welfare; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall take into consideration the reasonable provisions of adequate light and air; the effect of regulations on motorized and nonmotorized transportation systems; the character of the district and its peculiar suitability for the particular uses, and the conservation of the value of buildings and to encourage the most appropriate use of land throughout the zoning jurisdiction.

*(b)* In interpreting and applying the provision of this chapter; they shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and are to regulate and restrict the location of trades and industries and the location of buildings designed for specific uses, the intensity of the use of lot areas, the height and size of buildings, the area of yards, courts and other open spaces, and the areas where mobile homes may be parked, establishing the boundaries and districts for the said purposes. This chapter sets for the powers of the city council to accomplish such purposes, prescribing the procedure for change of regulations, restrictions and boundaries, providing for zoning powers and duties, and providing for appeals from the board of adjustment, providing this chapter is to affect buildings under existing permits, with certain limitations, providing procedures in case of noncompliance with this chapter, and prescribing penalties for the violation of its provisions.

*(c)* It is not intended by this chapter to interfere with or abrogate or annul rules or permits previously adopted or issued according to the law relating to the use of building or premises, nor to interfere with, abrogate or annul any easement, covenants or agreements between parties; provided, however, that where this chapter imposes greater restrictions as to use, or requires

larger open spaces or less height than required by such rules or permits or by easements, covenants or agreements, that provisions of this chapter shall control.

## **Section 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.

**Accessory Use** means a use occurring on the same lot either in the same building or in a separate accessory structure which is clearly incidental to the primary allowed use. **Alley** means a public thoroughfare not over 20 feet wide.

**Alley** means a public thoroughfare not over 20 feet wide providing a secondary access to abutting lots and not designed for general traffic circulation.

**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 elevations.

**Bed and Breakfast** A single household which remains owner-occupied at all times, providing from one to no more than six guest rooms for compensation, and where food service may be served to overnight guests only. The exterior appearance of the building shall not be altered from its single-family appearance.

**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 to any provision of this chapter.

**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 the curb does not exist, the city engineer will designate such lines.

**Conditional Use** means any use for which the zoning commission shall set specific conditional 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 is 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 purposes of this chapter.

**Depth of lot** means the 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** 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 year-round occupancy, which includes on 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 on 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.

**Existing structure** means any structure in place prior to July 12, 2011. (Ord. 1222)

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

**Floodway** means 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.

**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 be not 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 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.

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

**Lot frontage** means 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 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** See definition for Dwelling, Mobile Home.

**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 long-term 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 multi-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 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 changes 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 for 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 across the full width of the lot 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 24-6. Amendment of chapter or district map – Generally.**

The City Council may, from time to time, amend this chapter by supplementing, changing, modifying or repealing any of the regulations, restrictions or other provisions hereof, or the district map, or the districts on said map or the boundaries of such districts. A proposed amendment may be initiated by the city council upon its own motion or upon receipt of a request from the zoning commission or the planning commission, or upon receipt of a petition therefore from any interested person or persons or their agents.

#### **Section 24-7. Same – Application.**

The application shall include:

- (1) Name and address of applicant.
- (2) Date of application.
- (3) The applicant's statement of interest.
- (4) The present zoning district designation and the proposed designation.
- (5) Names and addresses of property owners who are within 150 feet, excluding the width of the streets, of the property for which the zoning district boundary change is being requested.
- (6) A fee of adopted by Council to cover the costs of clerical work, advertising, posting of notices, publication, and other administrative expenses, shall be deposited with the City Clerk. The money collected from this source will be deposited in the general fund.

#### **Section 24-8. Same – Hearing; Recommendation to Council.**

The applicant shall file the application with the Planning Department.

The Planning Department shall present the application to the City Zoning Commission.

The City Zoning Commission shall hold a public hearing and set a time, place and date for such public hearing.

- (1) The Planning Department shall notify the applicant of the hearing.
- (2) Notice of the hearing shall be published at least fifteen (15) days prior to said hearing in the official newspaper of the City.
- (3) Notice of the hearing shall be sent to the adjacent property owners and may be posted on the affected site.

Following the public hearing, the zoning commission shall submit its recommendations concerning the proposed amendment to the City Council.

Upon receipt of the Zoning Commission's recommendations, the City Council shall set a hearing date for the proposed amendment.

- (1) The city clerk shall notify the applicant of the hearing.
- (2) Notice of the hearing shall be published at least fifteen (15) days prior to said hearing in the official newspaper of the city.
- (3) Notice of the hearing shall be sent to the adjacent property owners and may be posted on the affected site.

**Section 24-9. Same – Hearing; Recommendation to Council.**

(a) If a protest against an amendment is signed by the owners of 20 percent or more of either:

- (1) Of the area of the lots included in such proposed change;
- (2) Of those immediately adjacent in the rear thereof extending 150 feet therefrom;
- (3) Of those adjacent on either side thereof within the same block; or
- (4) Of those directly opposite thereof extending 150 feet from the street frontage of such opposite lots;

Then such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the City Council.

A public hearing shall be held on all protests to amendments, as per state law.

At least ten days notice of the time and place of the hearing shall be published in the official newspaper of the City.

All protests to amendments shall be filed in writing with the city clerk/treasurer prior to the time set for the hearing.

**Section 24-10. Same – Final Action by the Council.**

Final action shall be taken by the City Council, which shall approve, conditionally approve, or disapprove the action. The initiating petitioner shall be advised of the decision in writing within 15 days following the decision.

**Section 24-11. Nonconforming Use.**

- (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% 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% 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 24-12. Building permits.**

Building permits will be required for the installation of all mobile homes and other structures. They are obtainable at the City Engineer's office upon paying the required fee.

#### **Section 24-13. Exceptions to maximum height requirements.**

The following shall be exempt from maximum height requirements in all zoning district regulations; antennae, belfries, chimneys, cupolas, flagpoles, ventilators, water tanks and other appurtenances usually required to be placed above roof level and not intended for human occupancy.

#### **Section 24-14. Offstreet parking for places of public assembly.**

For churches, senior high schools, colleges and auditoriums, and for theatres, general auditoriums, stadiums and other similar places of assembly, at least on off-street parking space shall be provided for every ten seats of general assembly space provide in said building or structure.

#### **Section 24-15. Building setbacks.**

Where there is an existing building having a front, side or rear yard smaller than is permitted for new buildings under this chapter, such front, side or rear yard may not be further reduced. Where the erection of any proposed new buildings will have the effect of reducing any front, side or rear yard of an existing building below what is required by this chapter for a new building, a permit for such building shall be denied.

## **Section 24-16. Mobile Homes - Building permit required.**

All persons placing mobile homes within the jurisdiction of this chapter, whether they are renting or leasing or they own the lot or site on which the mobile home is to be parked, shall apply for a building permit at City Hall.

## **Section 24-17. Same – Footings, piers and caps.**

(a) Footings shall meet the following requirements:

- (1) All grass and organic material shall be removed from beneath the footings.
- (2) All footings shall be of a material impervious to rot which has a minimum weight bearing ability equal or greater than a solid piece of wood having minimum nominal dimensions of (2) two inches by (12) twelve inches by (20) twenty inches.
- (3) Each footing may be constructed from more than one piece of material provided that each piece of material has minimum nominal dimensions of not less than (2) two inches by (12) inches by (20) twenty inches, unless smaller dimensions are approved by the building inspector prior to use.
- (4) A footing shall be at least (4) four inches longer and (4) inches wider than the pier resting upon it, unless smaller dimensions are approved by the building inspector prior to use.
- (5) Tiedowns are to be either one-half-inch (I) bolt or one-half-inch (J) bolt poured within the footing. A one-quarter-inch cable is to be used from the bolt to the frame of the mobile home, and a 3/16<sup>th</sup> inch turnbuckle is to be used for adjustments.

Piers shall meet the following requirement:

- (1) Wooden or concrete piers.
  - a. A pier shall be constructed of a material or materials which have a minimum weight bearing ability equal to or greater than a standard (8) eight inch by (8) eight inch by (16) sixteen inch minimum celled concrete block. If a celled concrete block or an expanded shell is used to construct piers, the material shall be installed so the open end of each cell is perpendicular to the frame rail and to the ground.
  - b. A pier shall not be less than (8) eight nominal inches wide, and in any event shall be the same width as the cap resting upon it.
  - c. A pier eight inches in height or less may be constructed of more than one piece of material, provided each piece has a minimum nominal dimensions of (2) two inches by (4) four inches by (16) sixteen inches
  - d. A pier more than (8) eight inches in height or less may be constructed of more than one piece of material having a minimum nominal dimensions of (8) eight inches wide, (8) eight inches high and (16) sixteen inches long, provided that the pieces fit flush one to another.
- (2) *Metal piers.* Fabricated metal piers of equal load capacity and stability may be used.

Caps shall meet the following requirements.

- (1) All piers, except metal piers with their own caps, shall be topped with a cap of not more than (6) six inches in height and not less than (8) eight nominal inches wide and (16) sixteen inches long.
- (2) Each cap shall be constructed of the same material throughout, and may be constructed of more than one piece of material each having minimum nominal dimensions of (1) one inch by (8) eight inches by (16) sixteen inches.

Shims shall meet the following requirements:

- (1) All shims shall be (2) two inches or less in thickness and wide enough to provide bearing over the width of the cap; the maximum included angle shall be one degree.
- (2) The shims shall be driven tight between the cap and the frame rail to provide uniform bearing.

Footings, piers, caps and shims shall be installed directly under the main frame or chassis of the mobile home according to the manufacturer's recommendations, so long as those recommendations meet the minimum standards in the section.

All footings, piers, caps and shims shall be located under the units's support structure and shall be installed so the longest dimension of each piece of material used for the construction of a pier and of each footing, cap and shim is parallel with the ground and perpendicular to the frame and rail. Those nearest each end of the mobile home, and the shall be within (5) five feet from the end of the home, and the maximum spacing shall be (10) ten feet on centers, or according to the manufacturer's instructions.

#### **Section 24-18. Maximum height of fences and hedges; projecting tree branches or shrubbery.**

- (a) No fence, hedge or other visual obstruction exceeding three feet in height measured from the street grade shall be constructed in the front yard of any residential district or mobile home park district. For corner lots in the same districts where there are two street frontages, the side yard adjacent to the street shall have the same restrictions.
- (b) It shall be unlawful for the owner or occupant of any premises within the city to suffer or permit any branches of any trees, bushes, shrubs or shrubbery to project over any sidewalk or street at a height less than eight (8) feet.

#### **Section 24-19. Signs Prohibited on Certain Premises.**

No nameplate exceeding one square foot in area, no sign exceeding six (6) square feet in area pertaining to the lease, hire or sale of a building or premises, and no bulletin board exceeding twelve (12) square feet in area may be permitted on premises occupied by churches, temples, libraries, schools, colleges and playgrounds.



## **Section 24-20. Signage for Bed and Breakfast**

No sign may be larger than 6 square feet and must be complimentary to the architecture of the building. Signage location, design, lighting, and construction must be pre-approved, in writing, by the Zoning Commission.

## **Section 24-21. Special Uses**

### ***(a) Regulations for Keeping of Chickens.***

- (1) The keeping of up to six (6) chickens, but no roosters, shall be allowed in all districts allowing residential use if the following requirements can be met:
  - a. No coops or runs shall be located in front yard setbacks. In addition, for corner lots, side yard setbacks shall not be used.
  - b. Chicken coops and runs shall be located at least 20 feet away from any residential structure, church, school, or other building inhabited by people except the residence of the chicken owner, custodian, or keeper as measured from the nearest exterior wall of both structures.
  - c. Coops and runs must be set back a minimum of 10 feet from all property lines as measured from the nearest wall of the coop or run.
  - d. No coop shall exceed 48 square feet however eaves, feed boxes, and other minor appurtenances may extend further without being calculated as the basic square footage.
  - e. All coops shall be designed to be predator proof.
  - f. No coop shall exceed the height of 8 feet.
  - g. No coops or runs shall be constructed in the floodway in compliance with Chapter 5, Section 5.3(c) of the Floodplain Regulations and shall also comply with any requirements in Section 5.4(8) if located in the floodway fringe.
  - h. Runs will be constructed of wood or woven wire materials, will allow chickens to contact the ground, shall not exceed 6 feet in height, and shall not exceed twenty (20) square feet per chicken.
  - i. Run fencing shall be attached to the coop except in the case of a mobile coop.
  - j. Electrified fences on runs are prohibited.
  - k. No flags or banners shall be strung around the perimeter of runs.
  - l. If electrical lines/cords to coops are strung aerially, they should not be visible from neighboring properties or public spaces.
- (2) Mobile coops are allowed but are required to meet the location and design requirements in subsection (1)(a-g) and shall be confined within a run.
- (3) A permit is required. Prior to the issuance of the permit, a site plan shall be submitted to the planning department for approval.
- (4) The following restrictions shall apply to any person who has a permit to keep of chickens.
  - a. No chicken shall be permitted to roam freely outside of a run.

- b. From sunset to sunrise the chickens must be kept in the coop
- c. Chicken feed and manure must be stored in a rodent and raccoon proof container may not be placed in yard compost piles, and must be disposed of weekly in such a manner as to not become a public nuisance as defined in Chapter 15, Section 15-1, 1, f of the Municipal Code.

***(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 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 being rescued shall count the same as adult animals. 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 animal control regulations.

**Section 24-22 through 45. Reserved.**

## ARTICLE II. ZONING DISTRICTS

### Section 24-46. Zoning District Map Adopted.

The designation, location and boundaries of zoning districts established under this code shall be shown and depicted on a map designated as the Miles City Zoning District Map, which is hereby adopted by reference. The map and all notations, references and other information shown thereon shall be as much as part of this chapter as if the information set forth by such map was fully set forth in this section and shall be kept on display in the City Engineering Office.

### Section 24-47. Districts established.

- (a) For the purpose of classifying, regulating, and defining uses that are appropriately located the following Zoning Districts are established:

District	Short Title
A Residential District	A
B Residential District	B
Mobile Home-Residential District	MH-A
Mobile Home District	MH-B
Mobile Home Park District	MH-C
General Commercial District	GC
Local Commercial District	LC
Heavy Commercial District	HC
Industrial District	I
Open Space District	OS
Semi-Rural District	SR
Agriculture District	AG
Medical Campus District	MC
C Residential District	C
Light Industrial District	LI
Historic Mixed Use District	HMU

- (b) No building shall be erected, altered or used in a manner that does not conform with the regulations prescribed for the use district in which it located.

### Section 24-48. Boundaries Established.

The boundaries of districts are shown on maps which are hereby made a part of this chapter except all changes in zoning hereafter shall be shown on a revised map on display in the office of the building inspector. Where uncertainty exists with respect to the boundaries of the various districts, the following rules shall apply:

- (1) The district boundaries are centerlines of streets or alleys unless otherwise shown.

- (2) Where the district boundaries are not centerlines of streets or alleys and where the land has been or may hereafter be divided into lots, or blocks and lots, the district boundaries shall be construed to be lot lines.
- (3) Where land has not been subdivided into lots or blocks and lots, the district boundary lines on the district zoning map shall be determined by the use of the scale of measurement shown on the map.

**Section 24-49. Planned Unit Developments.**

When a proposed subdivision within the zoning jurisdiction of the city has been designated as a planned unit development by the governing body according to the subdivision regulations, said PUD shall be a permitted use in any zoning district.

**Section 24-50, 51. (repealed)**

**Section 24-52. Article not retroactive in effect.**

- (a) It is not the purpose of this article to undertake a widespread correction of undesirable conditions resulting from lack of proper control in the past. It is the purpose to prevent future development of such conditions. It is therefore provided that the provisions of this article as to uses of buildings, structures or premises shall not be construed to prevent the continued use of existing buildings for other uses than those permitted in this article during the reasonable life of said buildings; provided that any building or structure damaged to an extent of more than 50 percent of its valuation by fire, explosion, act of God or the public enemy shall not be repaired, altered or used except as provided in this article for new buildings and structures.
- (b) No building which has been damaged as provided in this section, to the extent of more than 50 percent of its replacement cost, shall be rebuilt or repaired, except in conformity with the regulations in this article.

**Section 24-53. A Residential District.**

(a) **Intent.** It is the intent of the A district regulations to provide for low-density residential use.

(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)

**(c) District Regulations for single-family dwelling.**

- (1) Minimum Lot Size.
  - a. Minimum width: 50 feet.
  - b. Minimum area: 5,500 square feet.
- (2) Setback Requirements.
  - a. Minimum of 25 feet from the structure line from all frontages.
  - b. Rear yard: Minimum of 20 feet from the structure line to the rear lot line, exclusive of a ten-foot easement for an alley.
  - c. Interior yard: Minimum of eight feet from the structure to the side interior lot line.
- (3) Minimum Open Area: 750 square feet of open area, excluding parking area for parking requirement.
- (4) Motor vehicle parking.
  - a. Motor vehicle parking shall be permitted on setbacks and yards.
  - b. Three and one-half off-street parking places shall be provided and retained for each dwelling unit. This includes one-half off-street parking place for guest parking.

**(d) District Regulations for duplex.**

- (1) Minimum Lot Size.
  - a. Minimum width: 50 feet.
  - b. Minimum area: 6,500 square feet.
- (2) Setback Requirements.
  - a. Minimum of 25 feet from the structure line from all frontages.
  - b. Rear yard: Minimum of 20 feet from the structure line to the rear lot line, exclusive of a ten-foot easement for an alley.
  - c. Interior yard: Minimum of eight feet from the structure to the side interior lot line.
- (3) Minimum Open Area: 1,000 square feet of open area, excluding parking area requirement.
- (4) Motor vehicle parking.
  - a. Motor vehicle parking shall be permitted on setbacks and yards.
  - b. Three and one-half off-street parking places shall be provided and retained for each dwelling unit for a total of seven spaces per duplex. This includes one-half off-street parking place for guest parking.

**(e) District Regulations for three-plex.**

- (1) Minimum Lot Size.
  - a. Minimum width: 75 feet.
  - b. Minimum area: 9,000 square feet.
- (2) Setback Requirements.
  - a. Minimum of 25 feet from the structure line from all frontages.

- b. Rear yard: Minimum of 20 feet from the structure line to the rear lot line, exclusive of a ten-foot easement for an alley.
  - c. Interior yard: Minimum of 12 feet from the structure to the side interior lot line.
- (3) Minimum Open Area: 1,500 square feet of open area, excluding parking area requirement.
  - (4) Motor vehicle parking.
    - a. Motor vehicle parking shall be permitted on setbacks and yards.
    - b. Three and one-half off-street parking places shall be provided and retained for each dwelling unit for a total of 10 ½ spaces per three-plex. This includes one-half off-street parking place for guest parking.

**(f) District Regulations for four-plex.**

- (1) Minimum Lot Size.
  - a. Minimum width: 100 feet.
  - b. Minimum area: 12,000 square feet.
- (2) Setback Requirements.
  - a. Minimum of 25 feet from the structure line from all frontages.
  - b. Rear yard: Minimum of 20 feet from the structure line to the rear lot line, exclusive of a ten-foot easement for an alley.
  - c. Interior yard: Minimum of 12 feet from the structure to the side interior lot line.
- (3) Minimum Open Area: 2,000 square feet of open area, excluding parking area requirement.
- (4) Motor vehicle parking.
  - a. Motor vehicle parking shall be permitted on setbacks and yards.
  - b. Three and one-half off-street parking places shall be provided and retained for each dwelling unit for a total of 14 spaces per four-plex. This includes one-half off-street parking place for guest parking.

**Section 24-54. B Residential District.**

**(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)

**(b) District Regulations, except townhouse development.**

- (1) Minimum Lot Size.
  - a. Minimum width: 50 feet.
  - b. Minimum area: 5,500 square feet.
- (2) Setback Requirements.
  - a. Minimum of 25 feet from the structure line from all frontages.
  - b. Rear yard: Minimum of 20 feet from the structure line to the rear lot line, exclusive of a ten-foot easement for an alley.
  - c. Interior yard: Minimum of eight feet from the structure to the side interior lot line.
- (3) Maximum height requirements. Maximum height of 38 feet, not to exceed three stories. Variances of up to five feet may be granted by the building inspector so long as the general character of the district is maintained.
- (4) Motor vehicle parking.
  - a. Three off-street parking places shall be provide and retained for each dwelling unit.
  - b. One-half off-street parking place shall be provided and retained for guest parking per dwelling unit.
- (5) Site Plan Review. The site plan for each multifamily project in excess of a four-plex shall be reviewed and approved by the city planning board for proper site development prior to the issuance of a building permit.
- (6) Single Family Dwelling.
  - a. Minimum Lot Size.
    1. Minimum width: 50 feet.
    2. Minimum area: 5,500 square feet.
  - b. Minimum Open Area: 500 square feet of open area, excluding parking area requirement.
  - c. Motor vehicle parking.
    1. Motor vehicle parking shall be permitted on setbacks and yards.
    2. Three and one-half off-street parking places shall be provided for each dwelling unit. This includes one-half off-street parking place for guest parking.
- (7) Duplex
  - a. Minimum Lot Size.
    1. Minimum width: 50 feet.
    2. Minimum area: 5,500 square feet.
  - b. Minimum Open Area: 750 square feet of open area, excluding parking area requirement.
  - c. Motor vehicle parking.
    1. Motor vehicle parking shall be permitted on setbacks and yards.
    2. Three and one-half off-street parking places shall be provided for each dwelling unit for a total of seven spaces per duplex. This includes one-half off-street parking place for guest parking.
- (8) Three-plex
  - a. Minimum Lot Size.
    1. Minimum width: 75 feet.
    2. Minimum area: 7,200 square feet.

- b. Minimum Open Area: 1000 square feet of open area, excluding parking area requirement.
  - c. Motor vehicle parking.
    - 1. Motor vehicle parking shall be permitted on setbacks and yards.
    - 2. Three and one-half off-street parking places shall be provided for each dwelling unit for a total of 10 and ½ spaces per three-plex. This includes one-half off-street parking place for guest parking.
- (9) Four plex
- 1. Minimum Lot Size.
    - a. Minimum width: 75 feet.
    - b. Minimum area: 8,900 square feet.
  - 2. Minimum Open Area: 1,250 square feet of open area, excluding parking area requirement.
  - 3. Motor vehicle parking.
    - a. Motor vehicle parking shall be permitted on setbacks and yards.
    - b. Three and one-half off-street parking places shall be provided for each dwelling unit for a total of 14 spaces per four-plex. This includes one-half off-street parking place for guest parking.
- (10) Five-plex
- a. Minimum Lot Size.
    - 1. Minimum width: 100 feet.
    - 2. Minimum area: 10,600 square feet.
  - d. Minimum Open Area: 1,500 square feet of open area, excluding parking area requirement.
  - e. Motor vehicle parking.
    - 1. Motor vehicle parking shall be permitted on setbacks and yards.
    - 2. Three and one-half off-street parking places shall be provided for each dwelling unit for a total of 17 and ½ spaces per five-plex. This includes one-half off-street parking place for guest parking.
- (11) Six-plex
- a. Minimum Lot Size.
    - 1. Minimum width: 100 feet.
    - 2. Minimum area: 12,300 square feet.
  - b. Minimum Open Area: 1,750 square feet of open area, excluding parking area requirement.
  - c. Motor vehicle parking.
    - 1. Motor vehicle parking shall be permitted on setbacks and yards
    - 2. Three and one-half off-street parking places shall be provided for each dwelling unit for a total of 21 spaces per six-plex. This includes one-half off-street parking place for guest parking.
- (12) Seven-plex
- a. Minimum Lot Size.
    - 1. Minimum width: 125 feet.
    - 2. Minimum area: 14,000 square feet.
  - b. Minimum Open Area: 2,000 square feet of open area, excluding parking area requirement.



- c. Motor vehicle parking.
  - 1. Motor vehicle parking shall be permitted on setbacks and yards.
  - 2. Three and one-half off-street parking places shall be provided for each dwelling unit for a total of 24 and ½ spaces per seven-plex. This includes one-half off-street parking place for guest parking.

(13) Eight-plex

- a. Minimum Lot Size.
  - 1. Minimum width: 125 feet.
  - 2. Minimum area: 15,700 square feet.
- f. Minimum Open Area: 2,250 square feet of open area, excluding parking area requirement.
- g. Motor vehicle parking.
  - 1. Motor vehicle parking shall be permitted on setbacks and yards.
  - 2. Three and one-half off-street parking places shall be provided for each dwelling unit for a total of 28 spaces per eight-plex. This includes one-half off-street parking place for guest parking.

**Section 24-55. MH-A Mobile Home Residential District.**

(a) **Intent.** It is the intent of the MH-A district regulations to provide for an area of mobile home housing development in acceptable city block conformation.

(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)

(c) **District Regulations**

- (1) Minimum lot size.
  - a. Minimum width: 50 feet
  - b. Minimum area: 6,000 feet.
- (2) Setback Requirements.
  - a. Front yard: Minimum depth of 25 feet.
  - b. Rear yard: Minimum of 20 feet, exclusive of a ten-foot easement for an alley.
  - c. Side yard: Minimum width of ten feet from side lot lines.
- (3) Motor Vehicle Parking. Two off-street parking spaces shall be provided.
- (4) Skirting. Within 60 days, a mobile home shall be skirted with material similar to its siding material or better.

### **Section 24-56. MH-B Mobile Home District.**

(a) **Intent.** It is the intent of the MH-B district regulations to provide for an area which provides for mobile home development for residential use.

(b) **Permitted uses.**

(1) Mobile Homes

(c) **District Regulations.** Same as for the MH-A district.

### **Section 24-57. MH-C Mobile Home Park District.**

It is the intent of the MH-C district regulations to provide for an area for a mobile home park to be developed for residential use. Such developments shall comply with the Montana Subdivision and Platting act.

### **Section 24-58. General provisions affecting residential districts**

(a) **Signs.** No nameplate exceeding one square foot in area is permitted, nor signs exceeding six square feet in area pertaining to the lease, hire or sale of a building or premises; except that bulletin boards not exceeding 12 square feet in area may be permitted on premeises occupied by churches, temples, libraries, schools, colleges, and playgrounds.

(a) **Vacant Lots.** Vacant lots may be used for gardening, tennis courts, playgrounds and other recreational facilities only, and shall be kept free of all rubbish and/or garbage at all times. No business equipment or other large equipment shall be stored on vacant lots in residential zones; provided that other uses of vacant lots may be permitted by written authority from the city council with the continuing consent of the owners of 85 percent of the property within 150 feet of the lot or lots.

(c) **Garages.** Garages shall have the same setback requirements as residences, except for detached garages. Detached garages may be built in the rear yard to the interior lot line and to the alley easement line. Where detached garages face the alley, the garage shall not be closer than 25 feet from the opposite alley easement line. All detached garages must be at least ten feet from the residence and shall not exceed 1200 square feet with sidewalls not to exceed ten feet in height. Garage roof slope must be similar to the residence. Garage exterior siding materials must be compatible with and similar to the residence. Garages shall be of pre-engineered or frame construction. A continuous open area of not less than ten percent of the total residential/garage building site area located from the rear lot line to the rear of the principal building shall be maintained. Garages that are not solely used for vehicle storage, residence and grounds maintenance, and other uses directly associated to the primary residential use shall be considered commercial or light industrial in nature and shall not be permitted in residential zones.

**(d) *Townhouse developments.*** It is the intent of this subsection to provide for townhouse developments which will be compatible with the residential character of zoning districts A, B, and MH-A.

- (1) Two unit developments. A two-unit development shall:
  - a. Have a unit width of not less than 20 feet.
  - b. Provide not less than 1,000 square feet of open space.
  - c. Provide not less than 1,200 square feet of off street parking.
  - d. Provide side yards in the following manner: Not less than eight feet for an end unit on an interior lot and not less than 12 feet for an end unit on a corner lot.
  - e. Provide a front setback of not less than 25 feet.
  - f. Provide a rear setback of not less than 20 feet.
  - g. Occupy a contiguous land area of not less than 6,000 square feet.
  
- (2) Three unit developments. A three-unit development shall:
  - a. Have a unit width of not less than 20 feet.
  - b. Provide not less than 1,500 square feet of open space.
  - c. Provide not less than 1,800 square feet of off street parking.
  - d. Provide side yards in the following manner: Not less than eight feet for an end unit on an interior lot and not less than 12 feet for an end unit on a corner lot.
  - e. Provide a front setback of not less than 25 feet.
  - f. Provide a rear setback of not less than 20 feet.
  - g. Occupy a contiguous land area of not less than 6,640 square feet.
  
- (3) Four unit developments. A four-unit development shall:
  - a. Have a unit width of not less than 20 feet.
  - b. Provide not less than 2,000 square feet of open space.
  - c. Provide not less than 2,000 square feet of off street parking.
  - d. Provide side yards in the following manner: Not less than eight feet for an end unit on an interior lot and not less than 12 feet for an end unit on a corner lot.
  - e. Provide a front setback of not less than 25 feet.
  - f. Provide a rear setback of not less than 20 feet.
  - g. Occupy a contiguous land area of not less than 8,160 square feet.
  
- (4) Five unit developments. A five-unit development shall:
  - a. Have a unit width of not less than 20 feet.
  - b. Provide not less than 2,500square feet of open space.
  - c. Provide not less than 3,000 square feet of off street parking.
  - d. Provide side yards in the following manner: Not less than eight feet for an end unit on an interior lot and not less than 12 feet for an end unit on a corner lot.
  - e. Provide a front setback of not less than 25 feet.
  - f. Provide a rear setback of not less than 20 feet.
  - g. Occupy a contiguous land area of not less than 9,860 square feet.
  
- (5) Six unit developments. A six-unit development shall:
  - a. Have a unit width of not less than 20 feet.

- b. Provide not less than 3,000 square feet of open space.
  - c. Provide not less than 3,600 square feet of off street parking.
  - d. Provide side yards in the following manner: Not less than eight feet for an end unit on an interior lot and not less than 12 feet for an end unit on a corner lot.
  - e. Provide a front setback of not less than 25 feet.
  - f. Provide a rear setback of not less than 20 feet.
  - g. Occupy a contiguous land area of not less than 11,560 square feet.
- (6) Seven unit developments. A seven-unit development shall:
- a. Have a unit width of not less than 20 feet.
  - b. Provide not less than 3,000 square feet of open space.
  - c. Provide not less than 3,600 square feet of off street parking.
  - d. Provide side yards in the following manner: Not less than eight feet for an end unit on an interior lot and not less than 12 feet for an end unit on a corner lot.
  - e. Provide a front setback of not less than 25 feet.
  - f. Provide a rear setback of not less than 20 feet.
  - g. Occupy a contiguous land area of not less than 11,560 square feet.
- (7) Eight unit developments. A eight-unit development shall:
- a. Have a unit width of not less than 20 feet.
  - b. Provide not less than 4,000 square feet of open space.
  - c. Provide not less than 4,800 square feet of off street parking.
  - d. Provide side yards in the following manner: Not less than eight feet for an end unit on an interior lot and not less than 12 feet for an end unit on a corner lot.
  - e. Provide a front setback of not less than 25 feet.
  - f. Provide a rear setback of not less than 20 feet.
  - g. Occupy a contiguous land area of not less than 14,960 square feet.
- (8) Site Plan Review. Review of Townhouse Developments. The City Planning Board shall review proposed townhouse developments. The City Planning Board shall make a recommendation to the City Council based on the following criteria:
- a. Neighborhood character.
  - b. Exterior treatment of building.
  - c. Provision and treatment of open space.
  - d. Provision of off street parking.
  - e. Public utility adequacy for proposed development density.
  - f. Access to existing and future structures.
- (9) Site Plan Approval. The City Council shall require a site plan review. The City Council may approve, conditionally approve or disapprove the application for a building permit.

## **Section 24-59. GC General Commercial District.**

- (a) **Intent.** It is the intent of the GC district regulations to provide a general commercial district for those businesses and services which may require large storage space, may be open in the evenings, may generate large volumes of traffic, and are serving the extraordinary needs of the entire community.
- (b) **Permitted Uses.**
- (1) All general businesses and services.
  - (2) Theatres, lodges and assembly faculties.
  - (3) Churches.
  - (4) Multifamily dwellings, except townhouse developments.
  - (5) Multifamily dwellings in combination with uses listed in subsection (b)(1), (2), or (3).
  - (6) Animal Rescue Shelters per Section 24-20 (b)
- (c) **District Regulations.**
- (1) **Maximum Height Requirements.** Height is not to exceed the limits of existing fire department equipment.
  - (2) **Setback Requirements.**
    - a. Buildings located within the business district may be built to the property lines, except where a commercial district and a residential district are adjacent to each other within a platted city block.
    - b. Where a commercial and a residential district are adjacent to each other within a platted city block, construction of commercial buildings shall maintain the applicable residential setbacks along the common boundary between zoning districts.
  - (3) **Bulk Stations.** No bulk stations for the storage of gasoline and other inflammables are allowed within the jurisdiction of this chapter unless they provide for underground storage of all such inflammables and the plan are first approved by the building inspector and the fire chief.
  - (4) **Loading Facilities.** In the construction of any building in the business district, satisfactory facilities must be provided for loading and unloading stocks of merchandise, etc., at the rear entrance.
  - (5) **Fire Control.** Buildings within fire limits must conform to the provisions of the fire limit ordinance.
  - (6) **Parking for new construction.**
    - a. On-premises parking shall be required for employees at a ratio of one space per employee. Further on-premises parking shall be provided which is reasonably adequate to take care of persons coming to the building in the course of business. Requirements for on-premises parking shall be waived for those parcels in a designated parking district in which offstreet parking is provided.
    - b. Requirements for an on-premises parking shall be waived for those parcels in a parking district in which offstreet parking is provided.
  - (7) **Site Plan Review.** A review of the site plan by the Planning Board shall be required prior to issuance of the building permit.

- (8) Junkyards. Junkyards shall be approved by the City Council. Junkyards shall be concealed from view.

**Section 24-60. LC Local Commercial District.**

- (a) **Intent.** It is the intent of the LC district regulations to provide local commercial districts in close proximity to and serving the ordinary shopping needs of the immediate neighborhood, and which do not attract large volumes of traffic.
- (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)
- (c) **District Regulations.**
- (1) The regulations for the general commercial district set out in subsections 24-59 (c)(1) through (7) shall apply to the LC District.
  - (2) There shall be no junkyards.

**Section 24-61. HC Heavy Commercial District.**

- (a) **Intent.** It is the intent of the HC district regulations to provide a heavy commercial district which requires a type of service activity which tends to generate open storage yards, building material yards and warehousing.
- (b) **Permitted uses.**
- (1) All heavy commercial businesses and services.
  - (2) Related Offices.
  - (3) Animal Rescue Shelters per Section 24-20 (b)
- (c) **District Regulations.**
- (1) The regulations for the general commercial district set out in subsections 24-59(c) (1) through (8) shall apply to the HC district.
  - (2) Streets and roads shall be constructed to meet the City standards.

**Section 24-62. I Industrial District.**

- (a) **Intent.** It is the intent of the I district regulations to provide for the best location of industrial uses which be incompatible with other uses in other zoning districts.
- (b) **Permitted uses.** Any manufacturing, processes, business or treatment use shall be permitted, provided it does not create or tend to create a nuisance and/or undue hazard to life and/or property. It shall be the duty of the building inspector, fire chief and City health officer to determine and recommend to the City Council if any use or proposed use does or will tend to create such a nuisance or hazard.

**(c) District Regulations.**

- (1) Motor Vehicle Parking. Adequate parking shall be provided for all rolling equipment at a ratio of one-to-one, for visitors and customers at a ratio of one per management employee, and an off street space for 50 percent of employees.
- (2) Site Plan Review. Review of the site plan shall be required by the City planning board prior to issuance of the building permit.

**Section 24-63. OS Open Space District.**

**(a) Intent.** It is the intent of the OS district regulations to provide land without physical structures and buildings except where accessory to the provision of recreation.

**(b) Permitted uses are as follows:**

- (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)

**(c) District Regulations.** Any development accessory to the provision of recreation shall be subject to approval of the City Council.

**Section 24-64. SR Semi-Rural District.**

**(a) Intent.** It is the intent of the SR district regulations to provide for an area which is primarily residential but where an idealized country life may be followed with some agricultural practice.

**(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)

**(c) District Regulations.** Minimum lot size is one acre without public water and sewer, and on-half acre with either public water or sewer.

## **Section 24-65. AG Agriculture District.**

(a) **Intent.** No resolution, rule or regulation adopted pursuant to the provisions of this chapter shall prevent the complete use, development or recovery of any agricultural resources by the owner thereof.

(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 24-66. MC Medical Campus District.**

(a) **Intent.** To provide a zoning district for medical services with residential buffers that will allow the development of a medical campus.

(b) **Permitted Uses:**

- (1) Hospitals
- (2) Nursing Homes, including but not limited to Assisted Care and Ambulatory Care facilities.
- (3) Day Care Center
- (4) Medical Clinics for human services, including but not limited to Physicians, Surgeons, Psychologists, Dental and Optometrical Clinics and offices.
- (5) Pharmaceutical Stores
- (6) Durable Medical Goods Stores, Including assembly.
- (7) Health and Exercise Establishments
- (8) Medical diagnostic and research laboratories.
- (9) Dental laboratories
- (10) Medical Education Facilities in conjunction with other permitted uses.
- (11) All Uses Allowed Under Residential A, and Conforming to 11.04.070
- (12) All Uses Allowed Under Open Spaces, Except Cemeteries
- (13) All Uses Approved as Part of the Planned Unit Development

(c) **District Regulations:**

- (1) Parking for assisted and ambulatory care facilities:
  - a. Off-street parking shall be required for employees at the ratio of one (1) space per employee, based upon the maximum number of employees for the shift of maximum employment.
  - b. Additionally, one and one half (1 1/2) off-street parking spaces shall be applied per residential unit.



- (2) Parking for other permitted uses:
  - a. Off-street parking shall be required for employees at the ratio of one (1) space per employee, based upon the maximum number of employees for the shift of maximum employment.
  - b. Further off-street parking shall be provided which is reasonably adequate to take care of persons coming to the building in the course of business or visitation.
- (3) The Site Plan will be reviewed and approved by the City Planning Board for the proper site development prior to the issuance of a building permit.

**Section 24-67. C Residential District.**

**(a) Permitted Uses.**

- (1) Multifamily dwellings, high-rise dwellings and condominiums in excess of an eight-plex.
- (2) Parks, playgrounds, parking and open space areas.
- (3) Accessory uses.

**(b) District regulations.**

- (1) Minimum lot size.
  - a. Minimum width: building width plus 20 feet.
  - b. Minimum area: 17,400 square feet for a nine units plus 1,700 square feet for additional unit.
- (2) Minimum open area: 2,500 square feet of open area, excluding parking area, for nine units plus 250 square feet for each additional unit
- (3) Setback requirements.
  - a. Frontages: 25 feet from the structure line to the property line.
  - b. Rear yard: 20 feet from the structure line to the rear lot line, exclusive of a 20-foot alley/utility easement.
  - c. Interior yard: 10 feet from structure line to the side property line.
  - d. High-rise structures adjacent to other zones shall increase setbacks by an additional 8 feet per story.
- (4) Maximum height requirements. Structure height shall not exceed sixty (60) feet.
- (5) Motor vehicle parking.
  - a. Motor vehicle parking shall be permitted on setbacks and open space.
  - b. Two and one-half vehicle parking spaces shall be provided for each unit.
  - c. Parking of trailers, other motorized vehicles and other non-motorized vehicles or equipment shall not be permitted onsite.
  - d. Parking shall not be permitted on green space or play grounds.
- (6) Site plan review. The site plan shall be reviewed and approved by the City Planning Board for proper site development.

## **Section 24-68. LI Light Industrial District.**

**(a) Intent.** It is the intent of the LI Light Industrial District regulations to provide lands suitable for light industrial type applications which may be in close proximity or adjacent to residential or other zoning districts.

### **(b) Permitted uses.**

- (1) Manufacturing, fabrication, assembly process, or materials treatment that is conducted totally within an enclosed structure.
- (2) Open storage yards, building material yards, and warehousing.
- (3) Administrative space associated with a light industrial activity.
- (4) Light industrial activities which do not create or tend to create a nuisance, undue hazard to life or property, or detrimental environmental impacts.
- (5) Those services and businesses permitted under GC General Commercial except for churches, and multiple family dwellings.
- (6) Those services and businesses permitted under HC Heavy Commercial.

### **(c) District regulations.**

- (1) Motor vehicle parking. Adequate off-street parking shall be provided for all rolling stock, all customers and visitors, all employees and management personnel present at any time, and for all freight deliveries and freight handling.
- (2) Utilities. Design of sanitary sewer and water service systems must meet the requirements of the service provider. Site drainage plans must be submitted for approval. Design of new private utility facilities must be submitted for approval.
- (3) Buffer zones. Buffer zones and screening shall be required to protect adjacent zones which may be negatively impacted by the light industrial activities.
- (4) Site lighting. Security lights, parking lot lights and other site lighting must be designed so as to not encroach upon adjacent residential zones.
- (5) Signage. Address or directional signs shall not exceed 6 feet in height and 10 square feet in size. Business and advertising signs shall be limited to building face only. Post type or elevated signs shall not be permitted. Lighted signs shall be dimmed or turned off between the hours of 8:00 p.m. and 7:00 a.m. to reduce light pollution to adjacent residential zones.
- (6) Traffic control. Industrial or business activities that generate traffic counts in excess of 100 vehicle trips per 24 hour period or that will generate semi-truck or heavy equipment traffic must submit a traffic analysis and traffic plan. Semi-truck or heavy equipment traffic shall not be permitted to create conflict with existing traffic ways with adjacent residential zoning districts.
- (7) Materials and refuse control. Garbage, refuse, raw materials, manufacturing byproducts, finished products and excess materials shall be screened from view of adjacent zoning districts and maintained in an orderly manner.
- (8) Siteplan review. Review of the site plan by the City Planning Board is required prior to the commencement of construction or site development.

## **Section 24-69. Uses under Chapter 12 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;
  - (5) 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 24-70. HMU Historic Mixed Use District.**

- (a) **Intent.** It is the intent of the Historic Mixed Use District regulations to maintain the existing ground floor storefronts to the degree possible and provide land suitable for residential, office and retail uses to occur either independently in a separate structure or together with the same structure, and to add to the range of uses historic buildings can have in order to allow for adaptive reuse.
- (b) **Permitted uses**
- (1) Office.
  - (2) Retail use.
  - (3) Residential units above the ground floor.
  - (4) Residential units on the ground floor; for those buildings fronting Main Street the residential space must be in the rear of the storefront and shall not exceed one-third of the total gross square footage of that floor.
  - (5) Except for those buildings fronting Main Street, multifamily dwellings in existing historic buildings.

- (6) Hotels
- (7) Theaters, lodges, and assembly facilities.

**(c) District Regulations.**

- (1) Maximum Height. Height shall not exceed 40 feet.
- (2) Setback Requirements. Buildings may be built to the property lines.
- (3) Loading Facilities. New construction of a commercial building shall provide for loading and unloading at the rear of the structure.
- (4) Parking Requirements.
  - a. Existing uses shall be allowed to operate without the requirement for additional parking.
  - b. New commercial space shall provide one space per employee for the peak employee rate plus two (2) spaces per 1,000 net square feet.
  - c. New residential space shall provide parking at the rate of one space per unit
  - d. Theaters, lodges, and assembly facilities will meet the requirements in *Section 24-1*.
- (5) Site Plan Review. Prior to issuing a building permit for any new construction the City Planning Board must review the site plan.

## **ARTICLE III. ADMINISTRATION AND ENFORCEMENT**

### **Section 24-86. Authority of the Zoning Commission.**

(a) In order to avail itself of the powers conferred by this chapter, the City Council shall appoint a commission, to be known as the Zoning Commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The City Council shall not hold its public hearings or take action until it has received the final report of such commission.

The Zoning Commission shall consist of five members, who shall be appointed for staggered three-year terms and shall be removable for cause by the appointing authority upon written charges and public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

### **Section 24-87. Duties of the Zoning Commission.**

The duties of the Zoning Commission are as follows:

- (1) Recommend the zoning affairs of the City.
- (2) Make a preliminary report to the City Council on Zoning Recommendations.
- (3) Conduct hearings on zoning amendments.
- (4) Submit a final report to the City Council on Zoning Recommendations.
- (5) Establish procedures necessary for the submission of applications, notice of zoning hearings, and setting and accounting for fees.
- (6) Issue certificates of zoning compliance upon request.
- (7) Issue certificates of zoning noncompliance upon a zoning change.

### **Section 24-88. Certificates of Zoning Compliance.**

Certificates of zoning compliance for new or altered permitted uses and, upon request, for existing permitted uses, may be issued by the Zoning Commission.

### **Section 24-89. Certificates of Noncompliance.**

A writ of noncompliance shall be issued by the Zoning Commission when in fact the use is not in compliance with this chapter, if requested. The specific reason for noncompliance may be set forth in writing.

### **Section 24-90. Establishment of a Board of Adjustment.**

The City Council may provide for the appointment of a Board of Adjustment, and the regulations adopted pursuant to the authority of this chapter may provide that the Board of Adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special

exceptions to the terms of this chapter in harmony with its general purposes and intent and in accordance with the general or specific rules contained in this chapter.

### **Section 24-91. Powers and Duties of the Board of Adjustment; Appeals.**

- (a) The Board of Adjustment shall consist of five members, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.
- (b) The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in the absence of such Chairman, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board 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 actions, all of which shall be immediately filed in the Office of the Board and shall be a public record.
- (c) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all papers constituting the record upon which the action appealed was taken.
- (d) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of adjustment, after notice of the appeal has been filed with such officer, that, by reason of facts stated in the certificates, a stay would, in the opinion of such officer, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application and notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the notice of appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Any party may appear at the hearing in person or by attorney.
- (e) The Board of Adjustment shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto; to hear and decide special exceptions to the terms of this chapter upon which the Board is required to pass by such chapter; and to authorize upon appeal in specific cases a variance from the terms of this chapter as shall not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter

will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

- (f) In exercising the powers mentioned in this section, the Board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, 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.
- (g) The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official; or to decide in favor of the applicant on any matter upon which it is required to pass under any ordinance; or to effect any variation in such ordinance.
- (h) Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of record a petition, duly verified setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the Court within 30 days after the filing of the decision in the office of the Board.
- (i) Upon the presentation of such petition the Court may allow a writ of certiorari directed to the Board of Adjustment to review the decision of such board and shall prescribe therein the time within which a return thereto shall be made and served upon the relaters' attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court may, on application and notice to the Board and on due cause shown, grant a restraining order.
- (j) The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from, and shall be verified.
- (k) If, upon the hearing, it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
  - (1) Costs shall not be allowed against the Board unless it shall appear to the Court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

### **Section 24-92. Enforcement of chapter; remedies.**

- (a) The City Council shall provide for the enforcement of this chapter and of any regulation or ordinance made hereunder. A violation of this chapter or of such ordinance or regulation is hereby declared to be a misdemeanor, and the City Council shall provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.
- (b) In the case any building or structure is erected, constructed, reconstructed, repaired, converted or maintained, or any building, structure or land is used in violation of this chapter, or of any ordinance or other regulation made under the authority conferred by this chapter, the proper local authorities of the City, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, or to prevent any illegal act, conduct, business or use in or about such premises.

### **Section 24-93. Conflicts with other Laws.**

Whenever the regulations made under the authority of this chapter require a greater width or size of yards, courts or other spaces, require a lower height of building or less number of stories, require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulations, the provisions of the regulations made under authority of this chapter shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts other open spaces, require lower height of building or a less number of stories, require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this chapter, the provisions of such statute or local ordinance or regulation shall govern.

### **Section 24-94. Completion of buildings under existing permits.**

Nothing contained in this chapter shall require any change in the plans, construction or designated use of a building for which a building permit has been heretofore issued, or complete plans for which are on file with the building inspector at the time of the passage of this chapter, and a permit for the erection of which is issued within one month of the passage of this chapter, and the construction of which, in either case, shall have been diligently prosecuted within six months of the date of such a permit, and which entire building shall have been completed according to plans as filed within one year from the date of the passage of this chapter.

### **Section 24-95. Penalty for violation of Chapter.**

Any person, firm or corporation owning, controlling or managing any building or premises wherein or whereon there shall be placed, or there exists, anything in violating of the provisions of this chapter; any person, firm or corporation who shall assist in the commission of any violating of this chapter or who shall build contrary to plans or specifications submitted to and



approved by the building inspector; or any person, firm or corporation who shall omit, neglect or refuse to do any act required in this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, may be fined not less than \$10.00 nor more than \$500.00 for each offense, and may be imprisoned until such fine is paid, but not exceeding 50 days. Each day that a violation is permitted to exist shall constitute a separate offense.

**Section 24-96 – 120. Reserved.**

## **ARTICLE IV. FRANK WILEY FIELD INFLUENCE AREA**

### **Section 24-121. Short Title.**

This article shall be known and may be cited as Frank Wiley Field (Miles City's Airport) Influence Area Article.

### **Section 24-122. Definitions.**

As used in this article, unless the context otherwise requires:

**AIRPORT** means Frank Wiley Field (Miles City's Airport).

**BOARD OF AIRPORT HAZARD ADJUSTMENT.** A board consisting of five (5) members appointed by the City Council as provided in Section 67-4-312 and Sections 76-2-321 through 76-2-328 Montana Codes Annotated.

**INCOMPATIBLE USE.** Any use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.

**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.

### **Section 24-123. Airport Influence Area.**

There is hereby created an Airport Influence Area (hereinafter Airport Influence Area) around the Airport described as follows:

An area longitudinally centered on a the primary instrument approach runway which extends 10,000 feet from the threshold (ends) of the runway and is one (1) nautical mile in width on each side of the runway and its extended centerline. Land being located south and east of the Yellowstone River is excepted from the Airport Influence Area. A map of the Airport Influence Area shall be filed, upon passage of this article office of the Clerk and Recorder of Custer County, Montana and the office of the City Clerk of the City of Miles City, Montana.

### **Section 24-124. Airport Influence Area Zones.**

In order to carry out the provisions of this article, there is hereby created and established within the Airport Influence Area, an Airport Impact Zone and a Limited Development Area Zone which includes all of the land lying within the boundaries and zones so designated on the Airport Influence Area map on file with the Clerk and Recorder of Custer County, Montana and the City Clerk of the City of Miles City, Montana. The various land uses are hereby established and defined as follows:

- (1) **Urban Area.** An area consisting of typical dense residential and commercial development such as retail, banking, hotel/motel, restaurant, and similar uses.

- (2) **Suburban Residential Area.** An area consisting of suburban residential development typically sited on acreages in excess of 1 acre but not in excess of 10 acres.
- (3) **Industrial Area.** An area consisting of heavy to light manufacturing activities, warehousing, distributing, machinery and vehicle dealerships, and similar uses.
- (4) **Agricultural Area.** Areas devoted to primarily agricultural uses, scattered residential development with density not greater than 1 residence/20 acres. Also, forested lands, wildlife and waterfowl reserves, and similar uses.
- (5) **Terrain Obstructions.** Areas where natural terrain height penetrates the FAA FAR Part 77 Surfaces for the airport.
- (6) **Airport Impact Zone.** An area consisting of the runway protection zones and the primary surface. No development should occur in this area other than airport specific development whose needs are airport related. This area, according to Federal guidelines, should be under the airport's control to prevent incompatible land use development.
- (7) **Limited Development Area Zone.** An area defined and shown on the Land Use Compatibility drawing. Land use in this limited area should be restricted to uses that are not noise sensitive; those that do not promote public assembly; those that do not have distracting lights, glare, or smoke, provide electronic interference; those that are not bird attractors or otherwise deemed to be hazardous to aviation use.

### **Section 24-125 Airport Influence Area Limitations.**

In an Airport Impact Zone and Limited Development Area Zone, the following regulations shall apply:

- (1) **Uses Permitted Outright.** In an Airport Impact Zone, the following uses and their accessory uses are permitted outright:
  - a. Facilities and operations at the Airport.
  - b. Farm use, excluding livestock feed or sales yard and excepting those uses set forth in Subsection (2) of this Section.
- (2) **Conditional Uses.** In Limited Development Area Zones, the following uses and their accessory uses may be permitted when authorized in accordance with the requirements of this ordinance:
  - a. Farm accessory buildings and uses.
  - b. Mining, quarrying, or other extraction activity, including the processing or refining of ore or other raw materials.
  - c. Utility facility necessary for public service.
  - d. Golf course.
  - e. Park, playground, other public recreation site or facility, or community service facility owned and operated by a governmental agency or non-profit community organization.
  - f. Veterinary clinic, animal pound or kennel.
  - g. Private or public grounds and buildings for games, sports, riding arenas, race tracks and similar activities.
  - h. Water supply and treatment facility.
  - i. Manufacturing and warehousing.
  - j. Traveler's accommodation facilities.
  - k. Retail and wholesale trade facilities.

1. Residential use and development therefore.
- (3) **Use Limitations.** In a Limited Development Area Zone, the following limitations and standards shall apply to all uses permitted, unless a variance has been approved in accordance with Subsection 24-128(d).
- a. In approach surface zones from the runway end up to Four Thousand Five Hundred (4,500) feet from the end of the Runway, no meeting place for public or private purposes which is designed to accommodate more than 25 persons at any one time shall be permitted. Residential use is limited to one living unit per ten (10) acres in this portion of the approach zone.
  - b. Mining or quarry operation will not be permitted if such use will allow or cause ponding which is likely to attract birds.
  - c. No use permitted by subsection (2)(c) of this section shall permit any power lines to be located in Runway Protection Zones and any power line located within an approach zone shall be in conformance with designated approach slope ratios as defined in Montana Codes Annotated, Title 67, Chapters 4, 5, and 6, FAA FAR Part 77 and other local ordinances that regulate the height of objects.
  - d. No use permitted by this section shall be allowed if such use is likely to attract an unusual quantity of birds, particularly birds which are normally considered high flight.
- (4) **Design and Use Criteria.** In the consideration of an application for a proposed use in an Airport Impact Zone or a Limited Development Area Zone, the City Council shall take into account the impact of the proposed use on nearby residential and commercial uses, on resource carrying capacities, on the capacity of transportation and other public facilities and services, and on the appearance of the proposal. The proposed use shall be permitted only if the Council shall find all of the following criteria met:
- a. Proposal is in compliance with the Airport Master Plan;
  - b. Proposal is in compliance with the intent and provisions of this ordinance and more particularly with this section;
  - c. That economic and environmental considerations are in balance; and
  - d. That any social, economical, physical, or environmental impacts are reasonably minimized.
- (5) Any application for a proposed use in the Airport Impact Zone or a Limited Development Area Zone may be denied if, in the opinion of the Commission, the proposed use is not related to the present land use patterns in the area.
- (6) In approving a proposed use in the Airport Impact Zone or a Limited Development Area Zone, the Council shall be satisfied that the applicant is fully apprised of the City's policy relative to development in the area in relation to the existing airport and accessory uses thereof.
- (7) The Council may require establishment and maintenance of aesthetic or noise screens, the use of a flare resistant material in construction and landscaping, or may attach other similar conditions or limitations that will serve to reduce hazards to airport operations, including lighting and marking of airport hazards in accordance with Section 67-4-314 MCA.

## **Section 24-126 Use Restrictions.**

Notwithstanding any other provisions of this article, no use may be made of land or water within the Airport Influence Area or 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, creating bird strike hazards, facilities intended for the takeoff and /or landing of aircraft, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

## **Section 24-127 Non-conforming Uses.**

**Regulations Not Retroactive.** The regulations prescribed by this article shall not be construed to require the removal or other change or alteration of any structure lawfully in existence when this article becomes effective, 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 lawful structure, the construction or alteration of which was begun prior to the effective date of this article, and is diligently prosecuted.

## **Section 24-128 Permits.**

- (c) **Future Uses.** No material change shall be made in the use of land, no structure shall be erected or otherwise established, in any zone hereby created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use 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 24-128(d).
- (d) **Existing Uses.** No permit shall be granted that would allow a nonconforming use to become a greater hazard to 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.
- (e) **Nonconforming Uses Abandoned or Destroyed.** Whenever the City Council determines that a nonconforming use has been abandoned, no permit shall be granted that would allow such use to deviate from the zoning regulations without submitting an application to the Board of Airport Hazard Adjustment for a variance.
- (f) **Variations.** Any person desiring to erect or increase the height of a structure, permit the growth of a tree, or use property, not in accordance with the regulations prescribed in this article, may apply to the Board of Airport Hazard Adjustment for a variance from such regulations. The application for a 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 air space. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in substantial practical difficulty or unnecessary hardship and where the variance would not be contrary to the public interest. . A variance shall be granted for a nonconforming use where there is not immediate hazard to safe flying operations or persons and property in the vicinity of the airport and where the noise or vibrations from normal and anticipated normal operations of the airport would not be likely to cause structural damage. An application for variance to the requirements of this article will be considered by the Board of Airport Hazard Adjustment, which will act to grant or deny said application.

### **Section 24-129 Enforcement.**

It shall be the duty of the City to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the City upon a form published for that purpose. Applications required by this article to be submitted to the City of Miles City shall be promptly considered and granted or denied. Application for action by the Board of Airport Hazard Adjustment shall be forthwith transmitted by the City.

### **Section 24-130 Board of Airport Hazard Adjustment.**

- (a) There is hereby created a Board of Airport Hazard 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 administrative official, in the enforcement of this article; (2) to hear and decide special exceptions to the terms of this article upon which such Board of Airport Hazard Adjustment under such regulations may be required to pass; and (3) to authorize upon appeal in specific cases such variance from the terms of this article as permitted under Subsection 24-128(d).
- (b) The Board of Airport Hazard Adjustment shall consist of five members to be appointed for terms and in the manner provided for in Section 67-4-312 and 76-2-321 through 76-2-328 Montana Codes Annotated. The City may designate the Board of Adjustments appointed pursuant to 76-2-321 through 76-2-328 MCA as the Board of Airport Hazard Adjustment hereunder, in which case the terms of such members for purposes of this ordinance are concurrent with their terms as members of the Board of Adjustment.

### **Section 24-131 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.
- (f) The concurring vote of four members of the Board of Airport Hazard Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under this article; or to effect any variance hereunder.

**Section 24-132 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.

**Section 24-133 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 6 months, or both. Each day a violation continues to exist constitutes a separate offense.
- (b) The City of Miles City may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this article.

**Section 24-134 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.

## **ARTICLE V. AIRPORT ZONING**

### **Section 24-156. Short Title.**

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

### **Section 24-157. 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 (2,628) 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 24-159. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

**APPROACH, TRANSITIONAL, HORIZONTAL, AND CONICAL ZONES.** These zones are set forth in Section 24-158.

**BOARD OF ADJUSTMENT.** A board consisting of three (3) members appointed by the Town Council of Miles City as provided for in 67-6-206 M.C.A.

**CONICAL SURFACE.** A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 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.

**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 pre-existing 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 24-159.



**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 24-158. 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 (7) 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.

### **Section 24-158. Airport Zones; Established and Defined.**

In order to carry out the provisions of this article, there are hereby created and established certain zones which include 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 (1) 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.

- (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.

### **Section 24-159. Airport Zone 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 crested 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 thirty four (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 (7) 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 (7) 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.

### **Section 24-160. 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.

- (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.

### **Section 24-161. Non-conforming 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 this article, and is diligently prosecuted.
- (b) **Marking and Lighting.** Notwithstanding the proceeding 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 Miles City, Montana through its Miles City Airport Commission.

### **Section 24-162. Permits**

- (a) **Future Uses.** Except as specifically provided in (1), (2) and (3) 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 (d) of this Section.

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 seventy-five 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 seventy-five (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 seventy-five (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 Section 24-159 (5).

- (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.

### **Section 24-163. 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 Miles 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.

#### **Section 24-164. 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 from 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 regulations may be required to pass; and (3) to hear and decide specific variances as provided for under subsection (d) of Section 24-162.
- (b) The Board of Adjustment shall consist of five (5) members appointed by the City Council and each shall serve for a term of three (3) 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 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 hearings 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 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.

#### **Section 24-165. Appeals.**

- (a) Any person aggrieved, or any officer, department, board or bureau of the City of Miles City affected, by any decision made in the administration of this 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 Adjustment, by filing with the City, a notice of appeal specifying the grounds thereof. The City Council shall forthwith transmit to the Board of 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 Adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate, a stay would be in the opinion of the City Council, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Board of Airport Hazard Adjustment or 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.

**Section 24-166. Judicial Review.**

Any person or persons, jointly or severally, aggrieved, or any taxpayer or any officer, department, board or bureau of the City of Miles City, affected, by any decision of the Board of Airport Hazard Adjustment, may appeal to the appropriate court of record as provided for in Chapter 2 of Title 76, Montana Code Annotated.

**Section 24-167. 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 6 months, or both. Each day a violation continues to exist constitutes a separate offense.
- (b) The City of Miles City may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this article.

**Section 24-168. 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.

**Section 24-169 – 190. Reserved.**

## **ARTICLE VI. ANTENNAS, ANTENNA SUPPORT STRUCTURES AND WIRELESS COMMUNICATION FACILITIES**

### **Section 24-191. Intent.**

- (a) Encourage the location of antenna support structures in non-residential areas and minimize the total number of antenna support structures throughout the community;
- (b) Require the joint use of new and existing antenna support structures when possible;
- (c) Require wireless communication facilities to be located, to the extent possible, in areas where the adverse impact on the community is minimal;
- (d) Require wireless communication facilities to be configured in a way that minimizes the adverse visual impact of the towers and antennae; and
- (e) Enhance the ability of the providers of wireless communication services to provide such services to the community, as quickly, effectively, and efficiently as possible.

### **Section 24-192 Definitions.**

**Alternative Antennae Support Structure:** An antenna support structure designed to shield, conceal or disguise the presence of antennae or towers and blend with the surrounding setting. Alternative structures may include, but are not limited to, unobtrusive architectural features on new or existing structures, utility poles, clock towers, flagpoles and church steeples.

**Amateur Radio Antenna:** A ground, building or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, 49 CFR §97 and as *designed by the Federal Communications Commission (FCC)*.

**Amateur Radio Antenna Support Structure:** Any structure or device specifically designed, constructed and/or erected for the purpose of attaching, mounting or otherwise affixing amateur radio antennae. The term includes the structure and any support thereto.

**Antenna:** Any structure or device used for the purpose of collecting or transmitting electromagnetic waves, including but not limited to directional antennae, such as panels, microwave dishes, and satellite dishes, and omni-directional antennae, such as whip antennae but not including satellite earth stations.

**Antenna Support Structure:** Any structure or device specifically designed, constructed and/or erected for the purpose of attaching, mounting or otherwise affixing antennae. Antenna support structures may include, but are not limited to, self-supporting lattice towers, guyed towers, or monopole towers. The term also includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative antenna support structures and the like. The term includes the structure and any support thereto.



**Antenna Support Structure Height:** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure including any attached antennae. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height. The height of roof-mounted antenna support structure height does not include the height of building on which they are mounted.

**Co-Location:** The use of a wireless communications facility by more than one wireless communications provider.

**Commercial Wireless Communications Services:** Licensed commercial wireless telecommunication services including cellular, personal communications services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

**Equipment Enclosure:** A structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals. Associated equipment may include air conditioning, backup power supplies, and emergency generators.

**FAA:** Federal Aviation Administration.

**FCC:** Federal Communications Commission.

**Government:** The United States of America and all of its agencies, the State of Montana and all of its agencies and political subdivisions, including but not limited to Custer County and the City of Miles City.

**Licensed User:** Any individual or entity licensed by the FCC to place an antenna upon an Antenna Support Structure.

**Tower Farm:** Any tract or tracts of land upon which there exists more than one Antenna Support Structure that is located within Seven Hundred Fifty (750) linear feet of another Antenna Support Structure. A tower farm may not contain more than three (3) Antenna Support Structures.

**Wireless Communication Facility:** An unstaffed facility for the transmission and/or reception of radio frequency (RF), microwave or other signals for commercial communications purposes, typically consisting of an equipment enclosure, an antenna support structure and one or more antennae. Amateur radio, land mobile radio, and commercial radio and television facilities are excluded from this definition.

### **Section 24-193. General Requirement of Special Review and Permit:**

All uses of property within the zoning jurisdiction of the City of Miles City for the location, construction, or modification of a new or existing Wireless Communication Facility, Antenna

Support Structure or Amateur Radio Antenna Support Structure shall require compliance with the application, special review and special permit provisions set forth in Section 24-197.

**Section 24-194. Exceptions from Application, Special Review and Permit:**

The following shall not require compliance with the provisions of Section 3 and are permitted uses:

- (1) Amateur Radio Antenna Support Structures, within any zone, that meet all of the following criteria:
  - a. Are located within the rear yard of a lot;
  - b. Are not located within any setback required in the zoning district in which it is located or across or upon any existing legal right of way or easement;
  - c. Have obtained a building permit if required under Section 5, below;
  - d. Have no lighting upon the structure except such hazard lighting as mandated by the FAA, provided, however, seasonal decorations which do not conflict with government regulations, may be permitted;
  - e. Have no signage or displays of any type upon the structure except warning signs required by law or applicable regulation, provided, however, seasonal decorations which do not conflict with government regulations, may be permitted; and
  - f. The maximum Antenna Support Structure Height is less than seventy five (75) feet;
- (2) Alternative Antenna Structures in all zones.
- (3) Amateur Radio Antenna Support Structure and Antenna Support Structures located wholly within Semi Rural (SR) and Agriculture (AG) Districts, and, if within a Tower Farm in such District, the total number of Antenna Support Structures does not exceed three (3) and the Tower Farm is not within 1 linear mile of another Tower Farm.
- (4) Amateur Radio Antenna Support Structures and Antenna Support Structures, that were in existence and in place or under actual construction in place prior to the date of final passage of this article, unless:
  - a. Such Amateur Radio Antenna Support Structure or Antenna Support Structure is subsequently damaged or destroyed and the cost of repair or reconstruction of such support structure exceeds fifty percent (50%) of the replacement cost of such support structure; or

- b. Such Antenna Support Structure has been abandoned. Abandonment is presumed if the support structure has not been utilized by any licensed user of the support structure for a period in excess of one hundred eighty (180) consecutive days and use of the support structure has not been reinstated by any licensed user within ninety (90) days of the City of Miles City giving written notice of its declaration of abandonment to all licensed users of the support structure. If the City of Miles City declares a support structure abandoned pursuant to this subsection, the burden shall be upon the licensed users of the support structure to document actual use of the support structure within such 180 consecutive day period; or
  
- c. Such Antenna Support Structure is modified subsequent to the final passage of this article and unless such modification is limited to:
  - 1. Addition of antenna arrays which do not result in an increase in the height of the tallest portion of the structure by more than 20 feet of the height of the structure as it existed on the date of final passage of this Ordinance and do not result in the Antenna Support Structure Height exceeding seventy five (75) feet for an Antenna Support Structure that was less than seventy five (75) feet in height on the date of final passage of this Ordinance;
  - 2. Addition of antenna, otherwise complying with subsection 4(1), above, not exceeding the number of antennae for which the Antenna Support Structure was originally designed to accommodate.
  
- d. Such Amateur Radio Antenna Support Structure is modified subsequent to the final passage of the ordinance from which this article derives and such modification results in the Antenna Support Structure Height exceeding seventy (75) feet.

**Section 24-195. Building Permits Required for All Antenna Support Structures and Certain Amateur Radio Antenna Support Structures.**

- (a) Any Amateur Radio Antenna Support Structure erected subsequent to final passage of this Ordinance shall require application for a building permit from the City of Miles City if the Amateur Radio Antenna Support Structure together with any attached Antenna have an Antenna Support Structure Height in excess of six (6) feet, if ground mounted, or in excess of six (6) feet above the highest point of the roof, if roof mounted. The application for building permit must include documentation that the Amateur Radio Antenna Support Structure is adequately anchored and engineered to prevent collapse and damage to adjacent structures or property in the event of failure.
  
- (b) All Antenna Support Structures shall require application for a building permit from the City of Miles City. The application for building permit must include documentation that the

Antenna Support Structure is adequately anchored and engineered to prevent collapse and damage to adjacent structures or property in the event of failure.

**Section 24-196. General Requirements for Location and Construction of all Wireless Communication Facilities.**

- (a) All construction shall comply with all applicable local and State of Montana building codes;
- (b) All facilities shall comply with all other applicable Government laws and regulations;
- (c) Minimum setback requirements from any residential structure or any lot line adjacent to any lot zoned Residential A or B (RA or RB) or Mobile Home Residential, Mobile Home or Mobile Home Park (MH-A, MH-B, or MH-C):
  - (1) For Antenna Support Structures one-half (½) the height of the Antenna Support Structure; and
  - (2) For accessory structures: The greater of fifteen (15) feet or the minimum yard setback requirements for the zone in which the structure is located.
- (d) Antenna Support Structures and accessory structures located in commercial or industrial zones shall meet the minimum yard setbacks for the zone in which they are located.
- (e) Antenna Support Structures and accessory structures shall not exceed the maximum lot coverage limits for the zone in which they are located.
- (f) Accessory structures shall not exceed the height limits for the zone in which they are located.
- (g) A secure chain link fence with plastic lath inserts, painted solid wood fence, or masonry wall, with a minimum height of 6 feet, shall be constructed and maintained around the perimeter of the Antenna Support Structure with any setbacks required for fences within the zone in which the structure is located.
- (h) The only lighting permitted upon an Antenna Support Structure shall be:
  - (1) Lighting mandated by FAA or other Government regulation. Unless otherwise mandated by such regulations, all such mandated lighting shall be only red beacons; and
  - (2) Security lighting mounted no higher than 20 feet above ground level. All such security lighting shall be directed towards the ground to minimize light pollution, prevent off-site light spillage, and avoid illumination of the tower. Cut-off security lighting must be utilized adjacent to existing residences or lots zoned RA, RB, MH-A, MH-B, or MH-C. When incorporated into the approved design of the facility, light fixtures used to illuminate adjacent sport fields, parking lots or similar areas may be included in the facility upon approval of the City Building Inspector.

- (i) Signage shall be limited to non-illuminated warning and equipment identification signs, unless otherwise mandated by applicable Government regulation.
- (j) To facilitate co-location, Antenna Support Structures shall be designed and constructed to accommodate the applicant's antennae and the following additional comparable antennae:
  - (1) For structures with an Antenna Support Structure Height greater than 100 feet, two (2) additional antennae;
  - (2) For structures with an Antenna Support Structure Height less than 100 feet but greater than 75 feet, one (1) additional antenna.
- (k) All new antennae must be co-located on existing Antenna Support Structures or Alternative Antenna Support Structures unless the application for special review demonstrates that it is not feasible to co-locate such antennae.
- (l) Equipment at a Wireless Communication Facility shall be automated whenever feasible in order to minimize traffic and congestion upon the facility site.
- (m) All Wireless Communication Facilities and the site upon which they are located shall be maintained at all times in compliance with all applicable Government laws and regulations.
- (n) Wireless Communications Facilities shall comply with the following visual impact/aesthetics standards unless otherwise mandated by Government law or regulation:
  - (1) Exterior finish shall be galvanized steel or a neutral color which blends with the color of structures adjacent to the site;
  - (2) Antennae installed on a structure other than a tower, together with associated electrical and mechanical equipment, shall be of a neutral color identical to or blending with the color of the support structure so as to render the antennae, electrical and mechanical equipment as visually unobtrusive as possible;
  - (3) Antennae and Antenna Support Structures may be mounted on the roofs of buildings (other than buildings which are utilized primarily as equipment enclosures for a Wireless Communication Facility) that are greater than thirty (30) feet in height above street grade so long as the antennae and Antenna Support Structure do not add more than thirty (30) feet to the total height of the building upon which they are mounted. Only monopole antenna support structures with omnidirectional (whip) or low profile single-directional (panel) antennae shall be mounted upon building roofs. Crows nest antenna arrays are prohibited upon building roofs.
  - (4) Wireless Communication Facilities attached to new or existing structures shall be designed to blend with the structure's architecture and placed so as to be incorporated with the vertical design elements of the structure.
  - (5) Wireless Communication Facilities shall not be located within any officially designated historic district unless:

- a. The location is required to be permitted by preemptive Government law or regulation; or
  - b. The proposed facility, upon application for special review, is determined by the City of Miles City to be designed to be hidden, screened or otherwise blend with the historical district structures and surroundings so as to be virtually unnoticeable.
- (o) Antenna Support Structures with an Antenna Support Structure Height in excess of seventy five (75) feet shall be located at least one (1) linear mile from any other Antenna Support Structures with an Antenna Support Structure Height in excess of seventy (75) feet, unless the proposed Antenna Support Structure is to be located in a Tower Farm.
- (p) A Tower Farm shall be located at least one (1) linear mile from any other Tower Farm.
- (q) Exceptions to requirements of subsections (o) and (p), above, may be granted by the Building Inspector during the special review process, if the applicant satisfactorily documents:
- (1) No existing Antenna Support Structure within the required separation distance of the proposed location can accommodate the applicant's proposed antenna; or
  - (2) A critical need exists for the proposed location and it is not technically feasible to locate or co-locate structures at or beyond the required separation distance.

**Section 24-197: Special Review Application, Application Fee, Review and Permit.**

- (a) Prior to commencing construction or modification of any Amateur Radio Antenna Support Structure, Antenna Support Structure or Wireless Communication Facility which is not specifically exempted under Section 4 of this Ordinance, the person or entity proposing construction of such structure or facility, shall submit an application in writing to the Building Inspector for the City of Miles City containing all of the following information:
- (1) The full name, current address and telephone number of the applicant and the address of the applicant's principal place of business;
  - (2) If the applicant is an entity, the form of entity, State of organization and, if a corporation or limited liability company, a certificate of good standing or certificate of existence issued by the Montana Secretary of State;
  - (3) A description of the proposed location of the facility or structure, including physical address, legal description of all land upon which the facility or structure will be sited, the height, latitude and longitude (or GPS coordinates) of the proposed location of the facility or structure, a map to scale showing the service area of the proposed facility or structure, and an explanation of the need for the facility or structure;
  - (4) A site plan showing the following:
    - a. North arrow.

- b. The location and dimensions of all vehicular points of ingress and egress, drives, alleys, streets, and easements.
  - c. Center line and names of major and minor arterial streets relevant to the application.
  - d. The locations and dimensions of all existing and proposed buildings, structures, and improvements including those that will be removed. All information must be labeled.
  - e. Setbacks from all property boundaries for existing and proposed structures and buildings.
  - f. Property boundaries and lot line dimensions.
  - g. Elevation drawing of proposed wireless communication facility including the antenna support structure, antenna platforms and associated equipment enclosures. Also indicate the maximum number of antenna platforms that can be supported.
  - h. Location of artificial light sources and the areas of illumination.
- (5) Area map showing the property boundaries of all lots or tracts adjacent to the proposed site and the location of any existing buildings on the adjacent properties.
  - (6) A map showing locations and service area of existing and approved Antenna Support Structures and Wireless Communications Facilities owned, operated by or utilized by the applicant, including specific information on the location, height and design of each Antenna Support Structure. The City of Miles City will retain a copy of all such maps and information submitted and such maps and information shall be public documents;
  - (7) Documentation of any mandated lighting requirements of the FAA or any other Government;
  - (8) If applicable, documentation of any FAA airspace review and a copy of any FAA comments;
  - (9) If the application is for an Amateur Radio Antenna Support Structure, a copy of the applicant's amateur radio FCC license. Otherwise, a copy of the applicant's FCC license authorizing it to provide the wireless communications services for which the facility or structure is proposed;
  - (10) Other than an application for an Amateur Radio Antenna Support Structure, documentation of the applicant's inability to utilize an existing Antenna

Support Structure or Wireless Communication Facility to accommodate the applicant's proposed antenna or antenna array. Such documentation shall include:

- a. A description of any existing Antenna Support Structure or Wireless Communication Facility which would meet the applicant's engineering requirements and documentation of the applicant's attempt to obtain permission to utilize such existing structure or facility and the owner's refusal to accommodate such request. If the inability to obtain permission is based upon applicant's position that the cost of use of such existing structure or facility is unreasonable, a comparison of the cost of such use with the cost of constructing and maintaining the proposed new structure or facility.
  - b. Documentation that no existing Antenna Support Structure or Wireless Communication Facility meets the applicant's engineering requirements. This documentation shall consist, at the minimum, of documentation that:
    1. No existing or approved antenna support structures are located within the geographic area required to meet the applicant's engineering requirements.
    2. Existing or approved antenna support structures are not of sufficient height to meet the applicant's engineering requirements.
    3. Existing or approved antenna support structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment and cannot be reinforced to provide sufficient structural strength.
    4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing or approved antenna support structures, or the antenna on the existing or approved antenna support structures would cause interference with the applicant's proposed antenna.
    5. The applicant demonstrates that there are other limiting factors that render existing or approved antenna support structures unsuitable.
- (11) Other than an application for an Amateur Radio Antenna Support Structure, a statement from the applicant that the applicant, upon commercially reasonable terms, will permit co-location by any FCC licensed wireless communication provider utilizing compatible technology up to the Antenna Support Structures capacity to accommodate additional antennae. The statement shall include details of how requests for co-location will be processed;



- (12) Documentation of the applicant's efforts to minimize adverse impact of the proposed structure or facility upon property values within a 300 feet radius of the proposed structure or facility, excluding the width of the streets, avenues or alleys.
  - (13) A map of all properties within a 300 feet radius of the proposed site, measured from the exterior boundaries of the lot containing the proposed site and excluding the width of the streets, avenues or alleys, together with a list of the names and mailing addresses of all record owners of tracts of land within such 300 feet radius, and envelopes, with proper prepaid postage attached, preaddressed to each such property owner.
  - (14) Such additional or supplemental information as the City Building Inspector shall designate in writing to the applicant as necessary for the consideration of the application.
- (b)** The application shall be accompanied by a fee of Three Hundred and no/100 Dollars (\$300.00) to cover the costs of clerical work, advertising, posting of notices, publication and other administrative expenses.
- (c)** Upon receiving an application, the City Building Inspector shall post in a conspicuous place upon the tract of land upon which the tower structure is proposed to be located a notice to the public stating the name of the applicant, the date of posting, applicant's intent to apply for a special permit to construct a tower, the proposed height of the tower to be constructed, and, that the application for the permit may be examined at the City of Miles City Engineer Office at City Hall. The notice shall be on fluorescent orange colored card stock of 1.5 feet by 2.0 feet nominal dimension with black lettering in at least 30 point bold type. The posting shall remain in place for at least fifteen (15) consecutive days.
- (d)** Taking into account the nature and scope of the application, within a reasonable amount of time following the City Building Inspector's determination that the application contains all information required under Subsection 7 (1) and that the proposed Amateur Radio Antenna Support Structure, Antenna Support Structure or Wireless Communication Facility meets with all other requirements of this Ordinance, the City Building Inspector shall:
- (1) Issue a special permit for the location and construction of the proposed structure or facility as described in the application;
  - (2) Issue a conditional special permit for the location and construction of the proposed structure or facility detailing, in writing, modifications in the location, design or construction of the structure or facility upon which such special permit is conditioned; or
  - (3) In writing, deny a special permit for the structure or facility and set forth the grounds for such denial, supported by substantial evidence contained in the record of such application and its consideration.

- (e) No application shall be denied or subject to conditions upon the basis of environmental effects of radio frequency emissions to the extent that such facility or structure complies with FCC regulations concerning such emissions.

**Section 24-198. Appeal and Review.**

- (a) Any applicant whose application is denied or conditioned in any manner by the City Building Inspector may appeal such denial or conditions to the Board of Adjustments in compliance with Section 24-91 of the Miles City Code;
- (b) Appeals to the Board of Adjustments may also be taken by any person aggrieved or by any officer, department, board or bureau of the City of Miles City affected by any decision of the City Building Inspector hereunder.
- (c) The Board of Adjustments shall hear and act upon all such appeals in compliance with Section 24-91 of the Miles City Code;
- (d) Any party appealing such matter to the Board of Adjustments may appeal the decision of the Board of Adjustments to a court of record in the manner provided in Section 76-2-327 Montana Codes Annotated.