

ORDINANCES

MILES CITY, MONTANA

ORDINANCE NO. 1163

AN ORDINANCE OF THE CITY OF MILES CITY, PROVIDING THAT THE CITY CODE OF MILES CITY, MONTANA BE AMENDED BY REVISING CHAPTER 24 TO PROVIDE UPDATED DEFINITIONS; LIMIT HEIGHT AND NUMBER OF ANTENNA SUPPORT STRUCTURES IN CERTAIN ZONING DISTRICTS; ALLOW A REVIEW PROCEDURE FOR PROPOSED ANTENNA SUPPORT STRUCTURES AND ANTENNAE ON GOVERNMENT-OWNED PROPERTIES; REGULATE THE LOCATION, CONSTRUCTION, HEIGHT AND CO-LOCATION REQUIREMENTS OF ANTENNA SUPPORT STRUCTURES, ANTENNAE AND ANTENNA SUPPORT STRUCTURES, ANTENNAE AND WIRELESS COMMUNICATIONS FACILITIES; REQUIRE ANTENNA SUPPORT STRUCTURE SEPARATION; REQUIRE CERTAIN APPLICATION SUBMITTAL INFORMATION FOR WIRELESS COMMUNICATION FACILITIES; AND REDUCE THE EXPIRATION OF CONDITIONAL USE PERIOD.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA:

Section 1. **Intent:**

1. Encourage the location of antenna support structures in non-residential areas and minimize the total number of antenna support structures throughout the community;
2. Require the joint use of new and existing antenna support structures when possible;
3. Require wireless communication facilities to be located, to the extent possible, in areas where the adverse impact on the community is minimal;
4. Require wireless communication facilities to be configured in a way that minimizes the adverse visual impact of the towers and antennae; and
5. 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 2. **Definitions:**

1. *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.
2. *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).

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3. *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.
4. *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.
5. *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.
6. *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.
7. *Co-Location:* The use of a wireless communications facility by more than one wireless communications provider.
8. *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.
9. *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.
10. *FAA:* Federal Aviation Administration.
11. *FCC:* Federal Communications Commission.
12. *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.

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13. *Licensed User:* Any individual or entity licensed by the FCC to place an antenna upon an Antenna Support Structure.
14. *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.
15. *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 3. **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 7 of this Ordinance.

Section 4. **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;

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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 Ordinance, 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 Ordinance and unless such modification is limited to:
 - i. 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;
 - ii. 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 this Ordinance and such modification results in the Antenna Support Structure Height

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exceeding seventy (75) feet.

Section 5. Building Permits Required for All Antenna Support Structures and Certain Amateur Radio Antenna Support Structures.

1. 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.
2. 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 6. General Requirements for Location and Construction of all Wireless Communication Facilities.

1. All construction shall comply with all applicable local and State of Montana building codes;
2. All facilities shall comply with all other applicable Government laws and regulations;
3. 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):
 - A. For Antenna Support Structures one-half (½) the height of the Antenna Support Structure; and
 - B. For accessory structures: The greater of fifteen (15) feet or the minimum yard setback requirements for the zone in which the structure is located.
4. 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.
5. Antenna Support Structures and accessory structures shall not exceed the maximum lot coverage limits for the zone in which they are located.
6. Accessory structures shall not exceed the height limits for the zone in which they are located.

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7. 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.
8. The only lighting permitted upon an Antenna Support Structure shall be:
 - A. Lighting mandated by FAA or other Government regulation. Unless otherwise mandated by such regulations, all such mandated lighting shall be only red beacons; and
 - B. 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.
9. Signage shall be limited to non-illuminated warning and equipment identification signs, unless otherwise mandated by applicable Government regulation.
10. To facilitate co-location, Antenna Support Structures shall be designed and constructed to accommodate the applicant's antennae and the following additional comparable antennae:
 - A. For structures with an Antenna Support Structure Height greater than 100 feet, two (2) additional antennae;
 - B. For structures with an Antenna Support Structure Height less than 100 feet but greater than 75 feet, one (1) additional antenna.
11. 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.
12. Equipment at a Wireless Communication Facility shall be automated whenever feasible in order to minimize traffic and congestion upon the facility site.
13. 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.
14. Wireless Communications Facilities shall comply with the following visual impact/aesthetics standards unless otherwise mandated by Government law or regulation:

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- A. Exterior finish shall be galvanized steel or a neutral color which blends with the color of structures adjacent to the site;
 - B. 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;
 - C. 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.
 - D. 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.
 - E. Wireless Communication Facilities shall not be located within any officially designated historic district unless:
 - i. The location is required to be permitted by preemptive Government law or regulation; or
 - ii. 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.
15. 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.
16. A Tower Farm shall be located at least one (1) linear mile from any other Tower Farm.
17. Exceptions to requirements of subsections 15 and 16, above, may be granted by the Building Inspector during the special review process, if the applicant satisfactorily documents:
- A. No existing Antenna Support Structure within the required separation distance of the proposed location can accommodate

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the applicant's proposed antenna; or

- B. 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 7: **Special Review Application, Application Fee, Review and Permit.**

1. 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:
 - A. The full name, current address and telephone number of the applicant and the address of the applicant's principal place of business;
 - B. 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;
 - C. 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;
 - D. A site plan showing the following:
 - i. North arrow.
 - ii. The location and dimensions of all vehicular points of ingress and egress, drives, alleys, streets, and easements.
 - iii. Center line and names of major and minor arterial streets relevant to the application.
 - iv. The locations and dimensions of all existing and proposed buildings, structures, and improvements including those that will be removed. All information must be labeled.
 - v. Setbacks from all property boundaries for existing and proposed structures and buildings.
 - vi. Property boundaries and lot line dimensions.
 - vii. Elevation drawing of proposed wireless communication facility including the antenna support structure, antenna platforms and associated equipment enclosures. Also

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indicate the maximum number of antenna platforms that can be supported.

ix. Location of artificial light sources and the areas of illumination.

E. 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;

F. 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;

G. Documentation of any mandated lighting requirements of the FAA or any other Government;

H. If applicable, documentation of any FAA airspace review and a copy of any FAA comments;

I. 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;

J. 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:

i. 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.

ii. 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:

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- a. No existing or approved antenna support structures are located within the geographic area required to meet the applicant's engineering requirements.
 - b. Existing or approved antenna support structures are not of sufficient height to meet the applicant's engineering requirements.
 - c. 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.
 - d. 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.
 - e. The applicant demonstrates that there are other limiting factors that render existing or approved antenna support structures unsuitable.
- K. 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;
- L. 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.
- M. 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.
- N. 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.
2. 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.

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3. 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.
4. 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:
 - A. Issue a special permit for the location and construction of the proposed structure or facility as described in the application;
 - B. 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
 - C. 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.
5. 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 8. **Appeal and Review.**

1. 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;
2. 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.
3. The Board of Adjustments shall hear and act upon all such appeals in compliance with Section 24-91 of the Miles City Code;

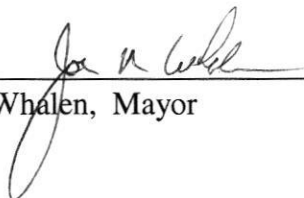
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4. Any party appealing such matter to the Board of Adjustments may appeal the decision of the Board of Adjustments to a court of record in the manner provided by §76-2-327 MCA.

Section 9. Severability. If any of the provisions of this Ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.


Section 10. Effective Date. This Ordinance shall become effective thirty (30) days after its final passage.

Said ordinance read and put on its passage this 25th day of July, 2006.



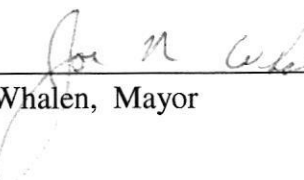
Joe Whalen, Mayor

ATTEST:




Patricia D. Huss, City Clerk

FINALLY PASSED AND ADOPTED this 8th day of August, 2006.



Joe Whalen, Mayor

ATTEST:



Patricia D. Huss, City Clerk