

ORDINANCES
MILES CITY, MONTANA

ORDINANCE NO. 1221

AN ORDINANCE GENERALLY REVISING THE PROVISIONS OF CHAPTER 4, OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY REGARDING ANIMALS, AND PROVIDING AN EFFECTIVE DATE THEREOF.

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

Section 1. Section 4-2 of the Code of Ordinances of the City of Miles City,

November 5, 2011

VETO

Variance to Sec. 4-30, Miles City Code of Ordinances

During our regular meeting on October 25, 2011, the City Council passed an amended motion to accept a recommendation from the Public Safety committee that a variance from the Animal Control ordinance (Sec. 4-30 - Kennels, Code of Ordinances) be granted to Diane Grutkowski for the purposes of maintaining an adoptive and foster care shelter for abused and abandoned animals. The motion was carried by Councilman John Uden and passed by a majority vote of 7-1, with Councilman Leroy Meidinger opposed.

Such a variance was offered as a precedent for considering like variances on a case-by-case basis by the city council. As passed, the variance would provide Ms. Grutkowski an exception from the kennel ordinance allowing her to feed and care for a kennel of twelve dogs within her residential neighborhood. It also holds out the potential for other petitioners to own and maintain an equal number of animals in other residential neighborhoods.

While the Miles City Code of Ordinances provides for variances against Sec. 3-63 (Open Container in Public Places) by the mayor and against Sec. 24-10 (Conditional Zoning Variances) by the city council, it provides no authority to either the mayor or the city council for issuing an Animal Control variance. Further, because there is no authority granted to the city council to issue a variance to the Animal Control ordinance by either statute or City code denial of other variance petitions by other persons, now or at a later date, would constitute a violation of the Equal Protection Clause of the 14th Amendment.

Therefore, this recent action to grant a variance against Sec. 4-30 (Kennel ordinance) to Ms. Grutkowski is contrary to law. Please consider this notice to be my veto of the motion granting said variance. Finally, our city attorney advises us that the city council may not override this veto, since doing so would sustain an illegal action.

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Section 3. Section 4-4 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-4. Cruelty.

It shall be unlawful for any person to knowingly, or negligently and without justification, subject any animal to mistreatment or neglect by:

- (a) Overworking, beating, tormenting, injuring or killing any animal; or carrying any animal in a cruel manner;
- (b) Failing to provide an animal in the custody of that person with adequate food, adequate drink, adequate exercise, adequate shelter, or adequate cleanliness necessary to maintain the animal in a state of good health.;
- (c) Abandoning any animal anywhere within the city limits;
- (d) Promoting, sponsoring, attending, conducting or participating in any fight between any animals;
- (e) Owning any animal for the purposes of fighting or known to be involved with fighting; or
- (f) Commits or omits any act which causes the unjustifiable physical pain, suffering or death of an animal.”

Section 4. There is added a Section 4-5 to the Code of Ordinances of the City of Miles City, Montana to read as follows:

“Sec. 4-5. Cleaning up after animals.

Any person owning, keeping, possessing, or harboring any dog, cat, or other animals shall promptly remove and dispose of all feces left on any public property and on any private property not owned by such person or lawfully occupied by such person.”

Section 5. Section 4-26 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-26. Definitions.

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

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

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

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

Adequate shelter means protection from injury, rain, sleet, snow, hail, wind, direct sunlight, the adverse effects of heat and cold; enables each animal to be clean and dry, except when detrimental to the species, and provides solid

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surface that is large enough for the animal to lie in a normal manner and can be maintained in a sanitary manner inside that shelter.

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

Animal means both male and female.

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

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

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

Kennel means any establishment wherein or whereon four or more dogs greater than 4 months of age are kept.

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

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

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

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

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

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

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

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- (5) These definitions do not apply to animals used in military or law enforcement work while they are actually performing in that capacity.”

Section 6. Section 4-28 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-28. Dog license required; fee; proof of vaccination.

- (a) Every person licensing a neutered male or spayed female dog, provided the owner presents to the city treasurer a certificate of neutering or spaying from the veterinarian, shall pay therefor the sum of \$5.00; for every other unneutered or unspayed dog, both male and female, the sum of \$15.00. Provided, however, that senior citizens (i.e. owners 65 years of age or over) shall be allowed to purchase licenses at a fifty percent reduction in cost.
- (b) No dog owner shall be issued a dog license for a dog without first submitting proof to the city treasurer that such dog has been vaccinated within the vaccination period by a licensed veterinarian or a public health agency.”

Section 7. Section 4-31 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-31. Barking or howling dogs; Impoundment of barking or howling dogs.

No person shall keep, feed, possess or allow to stay about the premises of such person any dog which by loud and continuous barking, howling or yelping constitutes an annoyance or disturbance to any person. Such a dog shall be deemed to be a public nuisance.”

Section 8. Section 4-34 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-34. Same -- Penalty for dog at large or barking or howling dog.

The penalty for permitting a dog to run at large, and for barking or howling or yelping dogs within the city in violation of section 4-31 or 4-33 is as follows:

- (a) First offense: A fine of not less than \$50.00;
(b) Second offense: A fine of not less than \$100.00;
(c) Third offense: A fine of not less than \$150.00;
(d) Fourth offense and subsequent offenses: A fine of not less than \$200.00.

In no case shall the penalty exceed a fine of \$500.00 or imprisonment for a term to exceed six months, or both. . The court does not have the authority to suspend any fine and upon the court’s determination, it would order an impoundment.”

Section 9. Section 4-35 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-35. Dogs, cats, or other household domestic pets prohibited in city parks and schoolgrounds; exception.

No owner or person in possession of any domestic pet shall take any domestic pet into any park or athletic field owned by the city or any schoolgrounds within the city at any time, or shall induce any domestic pet to enter or remain in any park or athletic field or any schoolground, provided this section shall not apply to a person accompanied by a service animal, or animal involved in

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police work, and animals used in presentations, parades, or community service work.”

Section 10. Section 4-36 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-36. Authority to impound domestic animals running at large or in prohibited areas.

Any officer or employee of the city is hereby authorized to chase, drive or take possession of any such domestic animal from any city park or city athletic field or any schoolgrounds within the city limits and to impound any such domestic animal or any domestic animal found to be running at large.”

Section 11. Section 4-37 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-37. Rabies vaccination required.

Every person who owns or possesses any dog or cat within the city shall have such animal vaccinated against rabies by a licensed veterinarian. Regardless of the age of the animal at initial vaccination, a second vaccination shall be given a year later.

Thereafter, the animal shall be vaccinated every two years, or according to label indication on the vaccine; or as determined by a veterinarian based on risk of exposure. Documentation of that different schedule is required at time of licensing as per section 4-28.”

Section 12. Section 4-38 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-38. Certificate of inoculation -- Generally. There shall be provided by the licensed attending veterinarian a certificate of rabies vaccination containing the following information and such other information as may be required to be filled in by persons legally authorized to vaccinate dogs or cats against rabies:

- (a) The name and address of the owner or possessor of the inoculated dog or cat.
- (b) The date and place of inoculation.
- (c) The year and series number of the rabies tag .
- (d) The breed, age, color, name and sex of the inoculated species of animal.
- (e) The veterinarian’s signature; and
- (f) The date by when the next rabies vaccination is due.”

Section 13. Section 4-39 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-39. Same -- Distribution of copies.

It shall be the duty of each veterinarian legally authorized to perform rabies vaccinations on dogs and cats, to provide a copy of the certificate to the owner or possessor of the inoculated dog or cat, . At the time of the inoculation of any dog , the veterinarian performing the vaccination shall also deliver to the owner or possessor of the dog the rabies tag as evidence of such inoculation. Rabies tags for cats are not required, but the veterinarian shall deliver to the cat owner the certificate of vaccination. The attending veterinarian shall retain proof of rabies vaccination for each dog and cat inoculated.”

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Section 14. Section 4-40 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-40. Same --Filing.

The veterinarian shall provide the animal control officer rabies vaccination information for specific animals as needed.”

Section 15. Section 4-41 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-41. Attachment of rabies tag.

- (a) Every owner or possessor of a dog shall attach to the collar or harness of the inoculated dog a tag evidencing an inoculation with antirabies vaccine, and the tag shall remain so attached at all times and until a replacement tag is received for the next vaccination. The owner or possessor of an inoculated cat, if a tag was issued, shall either attach the vaccination tag to the collar of the cat or retain the tag for inspection by the animal control officer or authorized representatives.
- (b) The rabies tag shall be of a durable material, suitable to being attached to the collar or harness of the inoculated dog or cat. The tag shall state the year of issuance, and the series or certificate number of the tag. The tag may also have the clinic name and phone number imprinted on it.”

Section 16. Section 4-42 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-42. Dogs and cats brought into city.

All dogs or cats which are brought in the city shall be in compliance with the laws and rules and regulations of the state regarding the importation of the animals, and shall have been vaccinated according to the requirements of Section 4-37. The metal tag denoting vaccination shall be firmly affixed to the collar or harness of the dog or cat and shall be evidence of compliance with this section when accompanied by a certificate of vaccination issued by a licensed veterinarian indicating rabies inoculation.”

Section 17. There is added a Section 4-44 of the Code of Ordinances of the City of Miles City, Montana to read as follows:

“Sec. 4-44. Animal enclosure maintenance.

All animal enclosures must be adequately maintained in a sanitary manner to allow the animal or animals freedom from debris, food waste, and excrement. The enclosure shall be maintained to minimize odors and hazards of disease and physical harm to the animal and the public. Animal waste is to be disposed of in a sanitary manner in proper containers and not on city or public property.”

Section 18. Sections 4-45 - 4-65. Reserved.

Section 19. Section 4-66 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-66. Creation; care for impounded animals.

- (a) There is hereby created a city dog pound which shall be operated by the city and be under the control of the animal control officer.
- (b) All animals impounded shall be housed and cared for at the city dog pound; provided, however, that, during an emergency period, when pound

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facilities are inadequate, the animal control officer is authorized to make provisions for additional housing and care elsewhere.

- (c) All animals impounded shall be properly housed, fed, watered and cared for, and it shall be the duty of the animal control officer to make provision for all necessary facilities, food, water, vehicles and other equipment required to carry out the provisions of this article."

Section 20. Section 4-67 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

"Sec. 4-67. Appointment of animal control officer.

The mayor of the city shall appoint an animal control officer whose duties shall be as provided in this article."

Section 21. Section 4-68 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

"Sec. 4-68. Animals subject to impoundment.

The animal control officer shall be authorized to impound all dogs which do not bear the proper rabies vaccination tag and city dog license tag, all cats which do not have a proper rabies vaccination, and all dogs and cats running at large within the city, and any dogs or cats subject to Section 4-73."

Section 22. Section 4-69 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

"Sec. 4-69. Notice of impoundment.

Upon the impoundment of any dog or cat, it shall be the duty of the animal control officer or an authorized representative of the animal control officer to notify without delay the owner or possessor of such dog or cat, if known, of the impoundment."

Section 23. Section 4-70 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

"Sec. 4-70. Period of impoundment.

All impounded dogs and cats shall be kept for a period of three full business days, unless redeemed sooner by their respective owners. Dogs and cats subject to Section 4-73 shall be impounded in accordance with that section."

Section 24. Section 4-71 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

"Sec. 4-71. Redemption by owner; fee. It is the duty of the animal control officer or any authorized representative of the animal control officer to release any dog or cat from the city-county pound upon presentation of satisfactory proof of ownership indicating that the dog or cat is duly licensed by the city and properly vaccinated against rabies, both for the current period, and upon payment of the pound service and boarding fees. In accordance with Sec. 4-70 and/or 4-73, the pound service fee shall be \$5.00. The boarding fee shall be \$10.00 for each day (or part thereof) the dog or cat has been in the pound.

No owner/person with a pending charge of animal cruelty or previously convicted of animal cruelty may redeem an impounded animal."

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Section 25. Section 4-72 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-72. Release to person other than owner.

After notice as required by section 4-69 has been issued and after three full business days of impoundment, such dog or cat may be released to any person, except as stated in Section 4-71 or Section 4-75, upon the payment of the pound service and boarding fees. At the discretion of the animal control officer, an animal may be taken to a local veterinary facility for euthanasia or adoption.”

Section 26. Section 4-73 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-73. Impoundment required when rabies suspected or person bitten.

- (a) A dog or cat which is known to have bitten or scratched any person so as to break the skin, or whose saliva has contaminated an abrasion, scratch, wound, or mucus membrane during the incident, , shall be impounded in the city pound for a period of 10 days or such other period of time as the animal control officer may direct. If the animal is owned, not current on rabies vaccination, and the owner declines quarantine, then the animal shall be euthanized and tested for rabies.
- (b) A dog or cat which is known to have been exposed to an animal infected with rabies shall be handled as follows:
 - (1) If rabies vaccination is current: Revaccinate the animal as soon as possible, quarantine for 45 days.
 - (2) If rabies vaccination is not current, or animal has never been vaccinated for rabies: Euthanasia OR quarantine 6 months and vaccinate for rabies 1 month prior to release.

A local veterinarian should be consulted on these cases. Other resources are Compendium of Animal Rabies Control and The Montana Department of Livestock.”

Section 27. Section 4-74 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-74. Destruction of animals infected with rabies.

Any animal appearing to have rabies, in the opinion of a Montana licensed veterinarian, shall be immediately destroyed. A licensed veterinarian shall submit the animal to the appropriate laboratory for rabies testing.”

Section 28. Section 4-75 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

“Sec. 4-75. Disposition of unclaimed animals.

At the discretion of the animal control officer, any unclaimed animals may be taken to a local veterinary facility for euthanasia or adoption. No unclaimed animal or animals may be sold or redeemed for commercial/research facilities or person representing such facilities. No person may redeem an animal or animals without adequate proof of ownership or adequate proof of ability to care for said animals.”

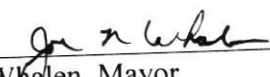
Section 29. Section 4-76 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

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"Sec. 4-76. Interfering with animal control officer. It shall be unlawful for any person to interfere with, molest, hinder or prevent the animal control officer or any authorized representative of the animal control officer from discharging the duties described in this article. Any person found guilty of such interference shall be penalized in accordance with section 1-11."


Section 28. This ordinance and the amendments contained herein shall become effective thirty (30) days after its final passage.

Said ordinance read and put on its passage this 10th day of May, 2011.



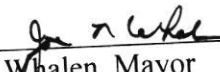
Joe Whalen, Mayor

ATTEST:



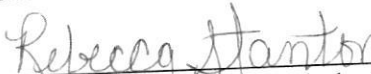
Rebecca Stanton, City Clerk

FINALLY PASSED AND ADOPTED this 24th day of May, 2011.



Joe Whalen, Mayor

ATTEST:



Rebecca Stanton, City Clerk

Affidavit of Publication

STATE OF MONTANA }
County of Custer } ss.

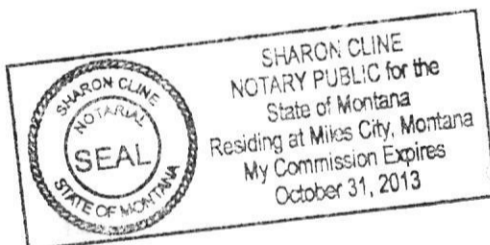
Mary Halvorson, being duly sworn on her oath,
says that she has been the principal clerk of the
printer of the MILES CITY STAR, a daily
newspaper of general circulation, printed and
published at Miles City, in said County and
State. That the Legal Notice Ordinance 1221. A
printed and true copy which, cut from the
columns of said newspaper, is hereto attached,
and made a part hereof, was printed and
published in said newspaper, in the regular and
entire issue of every number of the paper during
the period, May 18 and 23, 2011.

Signed Mary Halvorson

Subscribed and sworn to before me this 26th

day of May, 2011

Sharon Cline



LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the City Council of the City of Miles City at a Regular Council Meeting held on Tuesday, May 10, 2011 at 7:00 p.m., passed on first reading the following Ordinance:

ORDINANCE NO. 1221 AN ORDINANCE GENERALLY REVISING THE PROVISIONS OF CHAPTER 4, OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY REGARDING, ANIMALS

The above Ordinance is on file and available for public inspection at the City Clerk's Office at City Hall, 17 S. 8th Street, Miles City, Montana. Your are further notified that objections to the final adoption of the Ordinance will be heard by the City Council, at its regularly scheduled meeting in the Council Chambers at City Hall 17 S. 8th Street, Miles City, Montana on Tuesday, May 24, 2011 at 7:00 p.m.

For information or questions you may contact the City Clerk, 17 S. 8th Street, Miles City, Montana 59301, at telephone number (406) 234-3462.

BY ORDER OF THE CITY COUNCIL
s/Becky Stanton
City Clerk
(Publish May 18, 2011 & May 23, 2011)