

ORDINANCES  
MILES CITY, MONTANA

ORDINANCE NO. 1309

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILES CITY,  
MONTANA

ENACTING SECTION 23-1 OF THE CODE OF ORDINANCES OF THE CITY OF MILES  
CITY, MONTANA, AND ADOPTING A UTILITY RULE REQUIRING A PROPERTY  
OWNER'S CONSENT TO ANNEXATION AS A CONDITION OF RECEIVING WATER  
AND/OR SEWER SERVICE

WHEREAS, the City operates a municipal water and sewer utility, providing water from its municipal water supply system to various properties and receiving wastewater to its municipal treatment system from various properties located outside of the City limits; and

WHEREAS, Montana Code Annotated Section 69-7-201 requires each municipal utility to adopt, with concurrence of the municipal governing body, rules for the operation of its utility which outline the procedure for discontinuance of service and the reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries; and

WHEREAS, in 46 Op. Atty. Gen. No. 12 (1995), the Montana Attorney General ruled that a city or town may adopt a rule for the operation of its municipal sewer and/or water utility requiring a property owner's consent to annexation as a condition of continued sewer and/or water service; and

WHEREAS, Montana Code Annotated Section 7-13-4314 states that any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town. The Montana Supreme Court in *Gregg v. Whitefish City Council* and the AG Opinion cited above state that consent to annexation may be required for receipt of continued utility service, in addition to initiation of service, and

WHEREAS, the City adopted RESOLUTION NO. 3872, *An Annexation and Extension of Services Plan*, which states: Properties outside of the City municipal boundary will not be connected to or receive service from the City's water and/or sewer systems without either annexation nor the property owner submitting a waiver of the right to protest annexation as a requirement for receiving service; and, for those properties currently receiving water and/or sewer service that are not within the City limits, the City may require the property owner(s) to consent to annexation or waive the right to protest annexation as a condition of continued water and/or sewer service; and

WHEREAS, from time to time the City Council determines that it is in the best interests of the City to annex property owned by those persons, firms or corporations receiving water and/or sewer service, and to bring the properties within the corporate limits of the City; and

WHEREAS, the City desires to adopt a rule requiring a property owner's consent to annexation as a condition of initiating or receiving continued water and/or sewer service;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
MILES CITY, MONTANA AS FOLLOWS:

**Section 1:** That there is hereby enacted a Section 23-1, entitled Annexation Required, as follows:

Sec. 23-1. – Annexation Required.

The City may, at any time, require a property owner's consent to annexation as a condition of new or continued sewer and/or water service. Sewer and/or water service is defined as the receipt of water or transmission of wastewater from or to the City, regardless of the ownership of the delivery infrastructure which services the property. When the City determines to require such consent from a particular property owner, the City may notify the property owner, in writing, that the City seeks such consent, and that if such consent is not given, the City will require that the property owner discontinue receiving sewer and/or water service. The property owner may notify the City in writing of his or

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MILES CITY, MONTANA

her consent to annexation. If within 10 days of the property owner's receipt of such notice, the property owner contacts the City and makes firm arrangements, in writing, to discontinue sewer and/or water service, then the City shall not further pursue obtaining the property owner's consent. If, however, the property owner has not, within 10 days, made firm written arrangements to discontinue sewer and/or water service, then the City shall be entitled to treat the property owner as having consented to annexation of his or her property upon the expiration of such 10-day period. The failure by the property owner to respond in writing within 10 days shall entitle the City to treat the property owner as having consented upon the expiration of such 10-day period.

If the property owner consents to annexation under any of the methods described above, the property owner may not thereafter withdraw his or her consent to any proposed annexation of his or her property. If the property owner consents to annexation under any of the methods described above, then the City shall be entitled to disregard any protest that such property owner makes to a proposed annexation of his or her property. Nothing herein shall prevent the City from seeking consent even if the City has previously obtained a waiver of protest from such property owner or from his or her predecessor in interest.

**Section 2.** This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 14<sup>th</sup> day of February, 2017.

ATTEST:

  
Lorrie Pearce, City Clerk

  
John Hollowell, Mayor

**FINALLY PASSED AND ADOPTED** this 28<sup>th</sup> day of March, 2017

ATTEST:

  
Lorrie Pearce, City Clerk

  
John Hollowell, Mayor

# Affidavit of Publication

STATE OF MONTANA }  
County of Custer } ss.

Mary Rose Bovee, 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. **City of Miles City, Legal Notice.**

**Ordinance Number 1309.** 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 and time of publication, on the following dates,

March 10, and 24, 2017.

Signed

Mary Rose Bovee

Subscribed and sworn to before me this

10th

day of

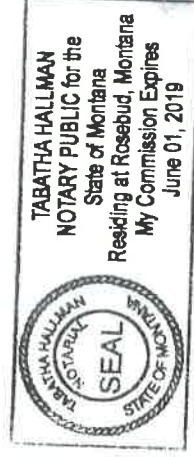
March

, 2017

Tabatha Hallman

Tabatha Hallman, Notary Public for the state of Montana, residing at Rosebud. My Commission Expires

June 1, 2019.



**LEGAL NOTICE**  
NOTICE IS HEREBY GIVEN that the City Council of the City of Miles City at a Regular Council Meeting held on Tuesday, February 14 at 7:00 p.m., passed on first reading the following Ordinance:

**ORDINANCE NO. 1309:**  
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA ENACTING SECTION 23-1 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA, AND ADOPTING A UTILITY RULE REQUIRING A OWNER'S CONSENT TO ANNEXATION AS A CONDITION OF RECEIVING WATER AND/OR SEWER SERVICE

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. You 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 Auditorium at Custer County District High School, 205 South Center, Miles City, Montana, on Tuesday, March 28 at 7:00 p.m.  
For information or questions you may contact

Allen Kelm, Public Utility Director at 234-3493.  
BY ORDER OF THE CITY COUNCIL  
Lorrie Pearce  
City Clerk  
(Published March 10, and 24, 2017)  
MNAXLP

# Affidavit of Publication

STATE OF MONTANA }  
County of Custer } ss.

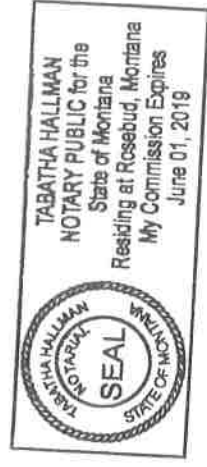
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**Ordinance Number 1309.** A printed and true copy which, cut from the columns of said newspaper, is hereto attached, and made a part hereof, was printed and published in said newspaper, in the regular and entire issue of every number of the paper during the period and time of publication, on the following dates,

February 17, and 24, 2017.

Signed Mary Rose Bovee  
Subscribed and sworn to before me this 17th  
day of February, 2017

Tabatha Hallman  
Tabatha Hallman, Notary Public for the state of Montana, residing at Rosebud. My Commission Expires June 1, 2019.



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Lorrie Pearce  
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