

# AGENDA

*Regular Council Meeting  
City Council Chambers*

*January 8, 2013  
7:00 p.m.*

**CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
ROLL CALL**

**1. APPROVAL OF COUNCIL MINUTES/COMMITTEE MINUTES**

- |    |                                   |            |
|----|-----------------------------------|------------|
| a. | City Council Meeting              | 12/11/2012 |
| b. | Public Safety Committee Meeting   | 12/18/2012 |
| c. | Flood Control Meeting             | 12/19/2012 |
| d. | Human Resources Committee Meeting | 12/28/2012 |

**2. SCHEDULE MEETINGS**

**3. REQUEST OF CITIZENS& PUBLIC COMMENT**

City Health Committee – **Sharon Wilcox** – regarding Sanitarian Mike Rinaldi contract  
**Ken Stabler** regarding vacant lots behind Tire Rama  
Suicide Prevention Community Based Media Project: **Ronny Hafez**

**4. APPOINTMENTS**

Appointment of Standing Committees  
Kathy Doeden and Melissa Hartman to the Historic Preservation Commission

**5. PROCLAMATIONS**

**6. STAFF REPORTS**

**7. CITY COUNCIL COMMENTS**

**8. MAYOR COMMENTS**

**9. PUBLIC HEARINGS**

**10. OLD BUSINESS**

- a. Discussion on Revising Ordinance No. 1201 – Sending Ordinances to Committee between First and Second Reading
- b. **RESOLUTION NO. 3573:** A Resolution Authorizing Change Order No. 6 To Cmg Construction, Inc. On The Contract For Water System Improvements For Phase 3 Water Main Replacement 20” Transmission Main Dated April 12, 2011.
- b. **RESOLUTION NO. 3574:** A Resolution Approving A Settlement Agreement With Ahanu Construction, Inc., CMG Construction, Inc., And North American Specialties



Insurance Regarding Disputes And Claims On The Contract For Water System Improvements For Phase 3 Water Main Replacement 20” Transmission Main Dated April 12, 2011 And The Claim Upon The Bond Securing Performance Of Such Contract.

11. **BID AWARD**

**BID OPENING**

12. **NEW BUSINESS**

- a. Approval of Claims
- b. Election of Council President
- c. **ORDINANCE NO. 1250:** An Ordinance Revising Sections 16-43 Of The Code Of Ordinances Of The City Of Miles City, Montana So As To Prohibit The Discharge Of Firearms On City Owned Or Leased Lands Within Three (3) Miles Of The City Limits Except At Approved Shooting Ranges.
- d. **RESOLUTION NO. 3576:** A Joint Resolution Of The Board Of Commissioners Of Custer County, Montana And The City Council Of The City Of Miles City Amending The Agreement For Joint Action For Operation Of The City-County Airport To Increase The Membership Of The Airport Commission From Five Members To Seven Members.
- e. **RESOLUTION NO. 3577:** A Resolution Authorizing A Printing Contract Between The City Of Miles City And Star Printing Company, A Montana Corporation, Of Livingston, Montana.
- f. Parks Department Request to purchase Tool Cat

14. **ADJOURNMENT**

Public comment on any public matter that is not on the agenda of this meeting can be presented under ARequest of Citizens@ provided it is within the jurisdiction of the City to address. Public comment will be entered into the minutes of this meeting. The City Council cannot take any action on a matter unless notice of the matter has been made on an agenda and an opportunity for public comment has been allowed on the matter. Public matter does not include contested cases and other adjudicative proceedings.



## REGULAR COUNCIL MEETING

December 11, 2012  
7:00 p.m.

### CALL TO ORDER

The Regular Council meeting was held Tuesday, December 11, 2012, in the City Hall Conference Room at City Hall, 17 S. 8<sup>th</sup> Street, Miles City, Montana. Mayor C. A. Grenz called the meeting to order. Council Members present were Dwayne Andrews, Roxanna Brush, John Hollowell, Mark Ahner, Jerry Partridge, John Uden, Bill Melnik and Sue Galbraith.

Also present were City Attorney Jerry Huss, Deputy City Attorney Erica Griffith, Fire Chief Dale Berg, City Planner Dianna Broadie, Police Chief Doug Colombik, Public Utilities Director Al Kelm, Grant Administrator Dawn Colton and Council Recorder City Clerk Becky Stanton.

### PLEDGE OF ALLEGIANCE

Mayor Grenz led the Council in the Pledge of Allegiance.

### APPROVAL OF COUNCIL & COMMITTEE MINUTES

#### **Regular Council Minutes – 11/27/2012**

- \*\* *Councilperson Brush moved to approve the minutes of the Regular Council Meeting of November 27, 2012, seconded by Councilperson Melnik. The motion then passed unanimously, 8-0.*

#### **Flood Control Committee Meeting – 11/29/12**

- \*\* *Councilperson Galbraith moved to approve the minutes of the Flood Control Committee Meeting of November 29, 2012, seconded by Councilperson Hollowell.*
- \*\* *Councilperson Ahner moved to approve corrections to the minutes of the Flood Control Committee Meeting of November 29, 2012, seconded by Councilperson Brush. The motion passed unanimously, 8-0.*
- \*\* *Original motion then passed unanimously, 8-0.*

### **Human Resources Committee Meeting – 12/04/12**

- \*\* *Councilperson Uden moved to approve the minutes of the Human Resources Committee Meeting of December 4, 2012, seconded by Councilperson Melnik. The motion then passed unanimously, 8-0.*

### **Finance Committee Meeting – 12/05/12**

- \*\* *Councilperson Ahner moved to approve the minutes of the Finance Committee Meeting, with a correction. The motion was seconded by Councilperson Brush and passed unanimously, 8-0.*

### **Public Safety Committee Meeting – 12/05/12**

- \*\* *Councilperson Uden moved to approve the minutes of the Public Safety Committee Meeting of December 5, 2012, seconded by Councilperson Galbraith. The motion then passed unanimously, 8-0.*

### **SCHEDULE MEETINGS**

**Public Safety Committee Meeting:** Tuesday, December 18, at  
12:00p.m. - Noon

### **REQUEST OF CITIZENS & PUBLIC COMMENT**

-None

### **APPOINTMENTS**

-None

### **PROCLAMATIONS**

-None

### **STAFF REPORTS**

-None

### **CITY COUNCIL COMMENTS**

Councilperson Andrews – inquired if any applications were received for the Public Works Director position. Mayor Grenz replied that the two original applicants had reapplied.

Councilperson Uden – inquired about the process to hire a new City Attorney, since Mr. Huss will be resigning January 4, 2013, to become a District Judge. City Clerk Stanton explained that the process has been started. The City currently does not have a job description approved for that position, as the City Attorney was originally a contracted position. Human Resource Officer Billie Burkhalter had sent some sample job descriptions over to his office. City Attorney Huss stated that he had sent a job description over to Human Resource Officer Burkhalter today.

Councilperson Brush – there are eight City Court individuals attending the City Council meeting to serve their Community Service hours.

Councilperson Ahner – There is a Council meeting scheduled for Christmas Day. He thanked the County Commissioners for paying the \$22,000 of Planning funds that had been previously contested.

*\*\* Councilperson Uden moved to abandon the Council meeting scheduled on December 25, 2012, seconded by Councilperson Brush. The motion then passed unanimously, 8-0.*

## **MAYOR COMMENTS**

Mayor Grenz had attended an MMIA meeting in Glendive today. They had suggested placing ground rules for Council meetings on the back of the agendas. Also he said the City needs to have the names of the community service individuals in order to have them covered under Workers' Compensation. City Clerk Stanton mentioned that the City is already on top of that issue with other Court workers and volunteers.

## **PUBLIC HEARINGS**

**ORDINANCE NO. 1248:** An Ordinance Amending Section 22-2(2) Of The Code Of Ordinances Of The City Of Miles City, Montana Amending The Designation Of Arterial Streets Within The City Of Miles City

*\*\* Mayor Grenz called for proponents three times and then called for opponents three times. Hearing none, the public hearing was closed.*

## **OLD BUSINESS**

**ORDINANCE NO. 1248:** An Ordinance Amending Section 22-2(2) Of The Code Of Ordinances Of The City Of Miles City, Montana Amending The Designation Of Arterial Streets Within The City Of Miles City

\*\* *Councilperson Uden moved to approve the Ordinance, seconded by Councilperson Melnik. On roll call vote, the motion then passed unanimously, 8-0.*

**RESOLUTION 3575:** A Resolution Authorizing Amendment Of An Ambulance Billing Services Agreement Between The City Of Miles City And Montana Emergency Health Care Consultants, Inc., A Montana Corporation, Doing Business As Solestone Reimbursement Services.

\*\* *Councilperson Brush moved to approve the Resolution, seconded by Councilperson Galbraith. On roll call vote, the motion then passed unanimously, 8-0.*

### **BID AWARDS**

-None

### **BID OPENING**

-None

### **NEW BUSINESS**

**RESOLUTION NO. 3563:** A Resolution Authorizing A Grant Agreement With The Montana Department Of Transportation Under The Community Transportation Enhancement Program-Safe Routes To School Project To Provide Safe And Convenient Walking To Garfield School And Authorizing The Mayor To Execute Such Agreement

\*\* *Councilperson Brush moved to approve the Resolution, seconded by Councilperson Ahner.*

Councilperson Ahner explained that, about a year ago, the City Council had approved from the City's CTEP account 10% of the total costs for the Safe Routes to School Project, or a maximum amount of \$25,000. The total costs of



this phase are \$127,598, so the total match of \$1,773 is paid by the City's Street Maintenance Fund.

City Attorney Huss read from the Finance Committee minutes dated December 5, 2012. They mentioned that City Attorney Huss was concerned about the City being responsible for maintenance of the sidewalks. It was determined in that meeting that the City would only be responsible for the sidewalk around Milwaukee Park and the homeowners would be responsible for their own sidewalks in front of their homes. The City Attorney stated that was not correct. The law says the City has a non-delegable duty to take care of its sidewalks. The City has an Ordinance that says the people that adjoin the sidewalk must keep it free of snow and maintain it. He said that ultimately it is the City's responsibility, as was proven in a claim on an individual who had an incident on South Haynes Avenue in front of Hardees. He is not opposed to this project, but he wants the City to be aware that maintaining the sidewalks is the City's responsibility. He also reminded the City that they are contractually stating to the State of Montana that the City will maintain the sidewalks.

Councilperson Ahner mentioned that the information the Finance Committee received was from the Montana Department of Transportation (MDOT) and they said the City Ordinance would apply in regards to adjacent private property owner's sidewalks. In regards to the sidewalk around Milwaukee Park, MDOT does not monitor the maintenance of sidewalks anywhere.

\*\* *On roll call vote, the motion then passed unanimously, 8-0.*

**JOINT RESOLUTION NO. 3565: RID #1A:** Joint Resolution Relating To A Proposed Rural Special Improvement District Which Is Intended To Include Four Parcels In The City Of Miles City Abutting The Proposed County Rural Special Improvement District Boundary, For The Purpose Of Providing For The Payment Of A Portion Of The Design And Construction Costs For Reconstruction Of An Existing Wastewater Collection System And Financing The Costs Thereof And Incidental Thereto Through The Issuance Of Custer County Rural Special Improvement District Bonds Secured By A Rural Special Improvement District Lien, A Reserve Account And The County's Rural Special Improvement District Revolving Fund

\*\* *Councilperson Galbraith moved to approve the Resolution, seconded by Councilperson Melnik.*

Mike Coryell of the Miles City Economic Development Corporation (MCEDC) explained they have been working on the RID#1 sewer line project for several years. They are now moving forward with it. There are four properties in this district and the other properties are in Custer County. There will be no cost to the City.

Public Utilities Director Kelm explained that there were not any City services available to these four properties and that is why they are in RID#1. He asked Mr. Coryell if these properties would be charged the same as the ones in the County. Mr. Coryell said yes.

Councilperson Ahner asked that, if the total cost of the project is \$1,990,000 and of that cost the assessed portion is \$288,000, then a large majority of the costs are being paid for by grants. Julie Kurkow, Grant Writer for MCEDC, stated that was correct. She said that loan amount of \$288,000 is with USDA, TSEP, and CDBG. There is a small amount of money from RID#1.

**\*\*** *On roll call vote, the motion then passed unanimously, 8-0.*

**RESOLUTION NO. 3566:** A Resolution Authorizing The Placement Of Stop Signs On The Intersection Of Pleasant Street And North Center Street

**\*\*** *Councilperson Brush moved to approve the Resolution, seconded by Councilperson Uden.*

Public Safety Committee Chairperson Uden explained that a resident in the area has had property damage due to excessive speed from vehicles driving through this intersection. He explained that there was evidence of the problem on the surrounding properties. He also mentioned that the police department was in favor of placing stop signs on each street of the intersection.

Councilperson Hollowell stated he is familiar with this area and he is concerned that the Council is having traffic stop for a curve. It seems to be a strange place for stop signs.

Councilperson Partridge stated he has always voted against stop signs as a way to control speed. He does not believe that is the purpose of a stop sign and therefore he will vote against this Resolution.

Councilperson Brush stated that the reason this item is before the Council is because a homeowner sustained property damages on two different occasions from two separate Driving Under the Influence (DUI) cases within two weeks. Neither driver had insurance.

\*\* *On roll call vote, the motion passed 5-3, with Councilpersons Partridge, Hollowell and Andrews voting nay.*

**RESOLUTION NO. 3567: A Resolution Approving Tax Compliance Procedures Relating To Tax-Exempt Bonds**

\*\* *Councilperson Ahner moved to approve the Resolution, seconded by Councilperson Uden. On roll call vote, the motion passed unanimously, 8-0.*

**Discussion on Revising Ordinance No. 1201 – Sending Ordinances to Committee between First and Second Reading**

Councilperson Ahner explained that the concern is that it seems some items appear to go to committees twice, as well as first reading, a public hearing and a second reading before the Council. He said there is concern to try and expedite the Council's actions. He suggested a possible solution by changing the word **shall** to **may** in the third sentence under Sec 2-26. It would read ". . . the proposed ordinance shall may be referred by the mayor to a suitable committee." He also suggested changing it to read "The ordinance may be referred by the mayor, with the consent of the majority of the council, to a suitable committee." With this change, an ordinance may or may not go back to a committee. City Attorney Huss explained that an ordinance would come up for first reading and then may or may not go to a committee before the public hearing and second reading. Montana state statute does not provide anything for City committees. The City Council has decided to send ordinances to committees. He suggested the amendment to the ordinance could read "upon first reading with passage, if the Council decides to send it to committee, the Council could refer it to a committee. If the Council does not make a motion to send it to committee, then it would only go on to the public hearing and the second reading.

Councilperson Ahner explained that the Arterial Streets Ordinance went to the Public Safety Committee first then, after being revised, it went to City Attorney Huss to redraft, and then it went to Council for first reading. Then the Mayor had to refer it back to the Public Safety Committee which had already reviewed it, and then it came back again to Council for a public hearing

and a second reading. The original purpose of the Ordinance was to ensure a committee had a chance to review the information at least once before a public hearing.

Councilperson Galbraith believes that it is important for Ordinances to go to Committee at least once.

Councilperson Brush asked why the Council could not just leave the Ordinance to read “the proposed Ordinance shall be referred by the Mayor to a suitable committee unless the Ordinance came from one.” City Attorney Huss stated that there are times when an Ordinance comes from Committee to him and it needs to be changed significantly. If it goes to first reading after it has been changed, it would then need to go to Committee again before the public hearing and second reading.

Councilperson Partridge stated that he was going to vote against any change to the Ordinance because it seems to leave the Council open to unintended consequences. He would prefer to keep things as they are.

Councilperson Ahner agrees with Councilperson Partridge. Even though it seems to be onerous, he feels it is important to sift through each ordinance. This process does take time but, it is necessary.

Councilperson Andrews would like to see it streamlined in order to increase the efficiency of the process. He does not feel it needs to go back to committee three or four times. He thinks if the Council has some mechanism to go back to committee, it can. It seems redundant to send each Ordinance automatically to Committee.

**\*\*** *Councilperson Hollowell moved to direct the City Attorney to draft an amendment to Ordinance No. 1201 to provide by majority vote of the Council for referral to a committee, seconded by Councilperson Brush. On roll call vote, the motion failed 3-5, with Councilpersons Galbraith, Melnik, Uden, Partridge, and Ahner voting nay.*

**RESOLUTION NO. 3568:** A Resolution Authorizing The City Of Miles City, To Enter Into A State-Local Disaster Assistance Agreement With The Federal Emergency Management Agency And The Montana Disaster And Emergency Services Division For The Hazard Mitigation Grant Program

\*\* *Councilperson Brush moved to approve the Resolution, seconded by Councilperson Galbraith. On roll call vote, the motion passed unanimously, 8-0.*

**RESOLUTION NO. 3569:** A Resolution Of The City Of Miles City, Montana, Designating The City Clerk, As The City Of Miles City's Representative For The Hazard Mitigation Grant Program

\*\* *Councilperson Galbraith moved to approve the Resolution, seconded by Councilperson Hollowell.*

Councilperson Andrews said he has no problem with the City Clerk handling this, but it does not seem to fit her duties. Grant Administrator explained that the City Clerk is mostly the contact for the sponsors to correspond with. Grant Administrator Colton will handle the claims. Councilperson Hollowell asked City Clerk Stanton to weigh in on the topic. She said she is the representative on most City grants and agrees to be the representative. She thanked him for asking.

\*\* *On roll call vote, the motion passed 7-1, with Councilperson Andrews voting nay.*

**RESOLUTION NO. 3570:** A Resolution Authorizing Change Order No. 1 To Dick Anderson Construction, Inc. On The Contract For The Haynes Avenue Lift Station Project

\*\* *Councilperson Ahner moved to approve the Resolution, seconded by Councilperson Brush.*

Councilperson Ahner explained that the Finance Committee had sent this to the Council with a recommendation to approve after hearing the explanation for the change order from Public Utilities Director Kelm.

\*\* *On roll call vote, the motion passed unanimously, 8-0.*

**RESOLUTION NO. 3571:** A Resolution Authorizing The City Of Miles City To Enter Into An Agreement With Tumblewood Development, Inc. For Sanitation Inspection Services For Calendar Years 2013.

\*\* *Councilperson Ahner moved to approve the Resolution, seconded by Councilperson Melnik.*

*\*\* Councilperson Uden moved to amend the Contract to read (Exhibit A) paragraph H "Serve as code enforcement officer for public nuisances within the city limits." Councilperson Ahner seconded the motion.*

Councilperson Ahner noted that under the third paragraph of the Resolution, it states that the "City of Miles City Health Board has recommended that the contract of Tumblewood Development, Inc., a Montana corporation,". He does not believe that the Health Board has recommended this contract.

Councilperson Brush asked City Attorney Huss if it is required by Ordinance for the recommendation to come from the City Health Board. City Attorney Huss noted that it is state law that the City Health Board hires its staff and since, they are City Employees, it has to be ratified by the Council. It is a contract, and the Mayor and the Council are the only ones who can contract for the City. She talked to Health Board Chair Sharon Wilcox and let her know they need to meet on it. To date, there has not been a meeting scheduled.

*\*\* Councilperson Uden moved to withdraw his motion to amend the contract. Then he moved to table this item until the City Health Board had an opportunity to review the contract. Councilperson Uden withdrew the motion to table this item.*

*\*\* Councilperson Ahner withdrew his motion to approve the Resolution.*

*\*\* Councilperson Ahner moved to refer the Resolution and attendant contract to the City Health Board for its review and approval, seconded by Councilperson Brush. The motion then passed unanimously, 8-0.*

**RESOLUTION NO. 3572:** A Resolution Authorizing The City Of Miles City To Grant An Easement To Landmark Land Company, LLC For A Road Easement For Ingress And Egress Across Airport Land In The Southwest Quarter Of Section 29, Township 8 North, Range 47 East, M.P.M.

*\*\* Councilperson Galbraith moved to approve the Resolution. It died without a second.*

**RESOLUTION NO. 3573:** A Resolution Authorizing Change Order No. 6 To CMG Construction, Inc. On The Contract For Water System

Improvements For Phase 3 Water Main Replacement 20”Transmission Main Dated April 12, 2011

\*\* *Pulled by Mayor*

**RESOLUTION NO. 3574:** A Resolution Approving A Settlement Agreement With Ahanu Construction, Inc., CMG Construction, Inc., And North American Specialties Insurance Regarding Disputes And Claims On The Contract For Water System Improvements For Phase 3 Water Main Replacement 20” Transmission Main Dated April 12, 2011 And The Claim Upon The Bond Securing Performance Of Such Contract.

\*\* *Pulled by Mayor*

#### **Approval of Mediation Location**

\*\* *Councilperson Uden moved to hold the mediations for the four grievances in Miles City instead of Billings, seconded by Councilperson Hollowell.*

Councilperson Ahner referred to the minutes of the Human Resources meeting held on December 4, 2012, and it was voted unanimously that the mediation be held in Miles City.

Mayor Grenz stated there were changes to the mediation. He understands from his correspondence with City Labor Attorney Larry Martin that the mediation will be held at Miles City and it will be closed to the public. It will not include the Human Resource Committee. Mediation will include Council Chairperson Ahner and Human Resource Committee Chairperson Uden, Mr. Martin, the grievant’s counsel, the grievant and the mediator. It will be held sometime in January.

Councilperson Andrews stated this was significantly different than what had ever been discussed. In the past the Council was told it would be open to the public, that the Council members could attend, and the lawyers were going to agree on the location, Miles City or Billings. He asked Human Resource Committee Chairperson Uden if that was the way he saw it.

Councilperson Uden stated that was the way it was considered by the Human Resource Committee based on the legal information they had at the

time. Since that time, new legal information has come to the attention of Mayor Grenz.

City Attorney Huss explained he was asked who was going to be involved in mediation and he was told the Human Resource Committee. If they were going to be involved, it would need to be a public meeting, since a quorum would be present. Since that time the composition of the mediation committee has been changed so now it is no longer a quorum of a committee or the City Council. Therefore, it does not need to be an open or public meeting.

Councilperson Andrews questioned who has the authority to make that change.

Councilperson Partridge asked why that the only Council members allowed to be present were Councilpersons Ahner and Uden. He is curious if the grievants are agreeable to this. Do they have any choice in this matter? Mayor Grenz explained that Mr. Martin was in contact with the grievants' attorney and this is what they felt was best because, if mediation was going to work, it should be a closed thing. Mayor Grenz asked MMIA if they thought it should be closed, and they agreed. He said if that is what the lawyers want to do, then the City should do it.

City Attorney Huss explained, any mediation that he had been involved in the parties first meet together and set out some ground rules. Then one party goes off in one room and the other party goes off in another room. The mediator goes back and forth between them trying to find some middle ground. If you do it as an open meeting, then the other side that you are mediating with can sit in on your meeting. They hear your strategy and hear what you are willing to do and not do. It makes it very difficult to mediate with an open meeting. If the two chosen Council members reach an agreement during mediation, it would be conditional upon coming back to the Council to vote on as a whole.

Councilperson Partridge stated that they were two unusual people to ask for. Mayor Grenz said that is who they asked for. Councilperson Partridge asked again if this is who the people wanted. City Clerk Stanton said the grievants had not asked for those two individuals. City Attorney Huss stated that is who Mr. Martin selected.

Councilperson Uden asked if both attorneys had agreed on Miles City for a location. Mayor Grenz said he did not ask.



Councilperson Hollowell asked if the Council needs to take action on who the mediation group is going to be. Whether they chose representatives or chose an open forum. As far as the open forum goes, there can be no quorum of a committee. So the Council could take four individuals from the Council as long as they did not meet a quorum for any Committee. So there would not be a quorum of the Council or a Committee and the mediation could still be closed.

City Attorney Huss reminded the Council that both sides have to agree to location and mediator.

\*\* *The motion then passed unanimously, 8-0.*

#### **Approval of Claims**

\*\* *Councilperson Uden moved to approve November claims, seconded by Councilperson Melnik. The motion then passed unanimously, 8-0.*

#### **Letter of Resignation of City Attorney Effective January 4, 2013**

\*\* *Councilperson Hollowell moved to accept the resignation of City Attorney Huss, seconded by Councilperson Brush. The motion then passed 5-3, with Councilpersons Hollowell, Andrews and Galbraith voting nay.*

#### **APPOINTMENTS**

-None

#### **ADJOURNMENT**

\*\* *Councilperson Brush moved to adjourn the meeting, seconded by Councilperson Uden and passed unanimously, 8-0.*

The meeting was adjourned at 8:49 p.m.

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**C.A. GRENZ, Mayor**

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**Becky Stanton, City Clerk**

## Public Safety Committee Meeting December 18, 2012

The **Public Safety Committee** met Tuesday, December 18, 2012, at 12:00 pm in the City Hall Conference Room. Present were Committee Chairperson John Uden and Committee Members Sue Galbraith, Duane Andrews and Mark Ahner. Also present were Police Chief Doug Colombik, Grant Administrator Dawn Colton, Public Utilities Director Al Kelm and Committee Recorder Connie Watts.

### REVIEW ORDINANCE PROHIBITING "JAKE BRAKES" IN CITY LIMITS

Chairperson Uden informed the Committee that an ordinance specifically addressing "jake brakes" does not currently exist for the City. They are, however, addressed in City Code under Sec. 22-59 "*Mufflers; prevention of excessive noise, fumes and smoke.*" So instead of discussing an ordinance, Chairperson Uden felt a resolution should be discussed which would place warning signs at various entrances to town advising that "jake brakes" are prohibited, and possibly the penalty. All city traffic ordinances are misdemeanors. These signs would be placed at Highway 59 North, Highway 59 South, Business 94 East, Business 94 West, and the west end of Pacific Avenue.

Grant Administrator Colton noted that our ordinance does not address "exhaust brakes," which are different from "jake brakes", or "engine brakes." She said they are not quite as noisy as engine brakes, but felt they should be addressed in our ordinance.

**\*\*** *Councilperson Ahner moved to recommend amending Section 22-59 of the Miles City Code of Ordinances to add "exhaust brakes" as a violation of the Code. The motion was seconded by Chairperson Uden and, on roll call vote, passed unanimously.*

Signage for the entrances to the City were then discussed. As the City has no jurisdiction on the Interstate, Public Works Director Kelm suggested a letter could be written to the Montana Department of Transportation informing them of the City's action and requesting appropriate signs be posted on the off ramps.

**\*\*** *Chairperson Uden moved to recommend that a resolution be adopted to place signs at entrances to the City notifying vehicles that "jake brakes," "exhaust brakes" and "engine brakes" are prohibited in the City of Miles City at Highway 59 North, Highway 59 South, Business 94 East, Business 94 North, and Pacific Avenue, as well as any other locations deemed appropriate by the Chief of Police. The motion was seconded by Committee Member Galbraith and, on roll call vote, passed unanimously.*

## **MAKE RECOMMENDATION ON CODE ENFORCEMENT OFFICER FOR THE CITY OF MILES CITY**

Chairperson Uden noted that, by law, the City must designate a code enforcement officer who would be responsible for enforcing, among others, public nuisance codes.

*\*\* Chairperson Uden moved to recommend designating the Chief of Police as Code Enforcement Officer. The motion was seconded by Committee Member Andrews and, on roll call vote, passed unanimously.*

## **ADDRESS CITIZEN'S CONCERNS ON UNCONTROLLED INTERSECTION OF SOUTH CENTER STREET AND ATLANTIC STREET (TRUCK ROUTE)**

Chairperson Uden said a citizen had asked the Mayor if a stop sign could be placed on the truck route at its intersection with South Center. After discussion, where it was noted that a yield sign is currently in place at South Center before that intersection, Chairperson Uden asked for a motion to place a stop sign on Bridge Street at its intersection with South Center. No motion was received.

## **COMMITTEE MEMBER COMMENTS**

Committee Member Ahner said that when he was at Spotted Eagle one afternoon he noticed three young men who were hunting geese. He called Fish & Game, talked to the warden, and told him we have an ordinance prohibiting the discharge of firearms in the City limits. The warden came out and checked the hunters' licenses, etc., and found nothing wrong. The game warden told Mr. Ahner that these individuals had also talked to the Sheriff and dispatch and the Mayor to obtain permission to shoot at Spotted Eagle.

Mr. Ahner later checked the existing ordinance and found it did not specifically say "property owned" by the City, but only specified property "within the City limits." He visited with City Attorney Huss, who wrote a draft to amend Ordinance 1236. The amendment specifies "...or located upon real property owned or leased by the City of Miles City within three (3) miles of the city limits of the City of Miles City..."

Mr. Ahner still needs to go to the title company to get a copy of the original patent transferring the land at Spotted Eagle from the United States to the City of Miles City.

Committee Member Andrews said he felt some goose hunting at the Airport is actually a good idea, as the geese can be a nuisance in that area, and hunting can help keep the geese thinned out.

Public Works Director Kelm said there is also some duck hunting allowed out at the Waste Water Treatment Plant, providing they call and notify the employees at the Plant ahead of time.

Chief Colombik felt that, because Spotted Eagle is a public recreation area, it is not the place to allow hunting. He said he looks at it as criminal endangerment. One of his concerns was also the confusion on County vs. City responsibility at Spotted Eagle. The Sheriff's Office does not feel it has any responsibility there, whereas the City's attorney feels they have quite a bit of responsibility.

Others on the Committee also expressed concern about hunting at the Spotted Eagle and Water Plant areas, but felt that it actually benefits the Wastewater Plant and Airport facilities.

Director Kelm suggested placing "no hunting" signs at Spotted Eagle and at the Water Plant.

As this issue was not on the agenda, no action could be taken at this meeting.

#### **CITIZEN REQUESTS**

None

#### **ADJOURNMENT**

*\*\* Having no more business before the Committee, Committee Member Ahner moved to adjourn, seconded by Committee Member Andrews and passed unanimously. The meeting was adjourned at 1:00 p.m.*

Respectfully Submitted:

Public Safety Committee Chairperson:

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Connie L. Watts, Recorder

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Chairperson John Uden

(Article III)  
Vehicle Equipment

(b) Every motorcycle shall be equipped with at least one and not more than two headlamps. (Code 1981, § 10.24.020)

State law reference—Headlamps on motor vehicles, MCA 61-9-203.

**Sec. 22-59. Mufflers; prevention of excessive noise, fumes and smoke.**

(a) Every motor vehicle shall, at all times, be equipped with a muffler in good working condition and in constant operation to prevent excessive or unusual noise or annoying smoke.

(b) No person shall operate any motor vehicle upon any street within the municipality which is equipped with an open exhaust pipe (commonly referred to as a "straight pipe") or any similar device.

(c) No person shall use a muffler cutout, bypass, modified header, modified expansion chamber, or any other similar device, the purpose of which is to bypass the vehicle's muffler, upon a motor vehicle upon a street within the municipality.

(d) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted to prevent the escape of excessive fumes or smoke.

(e) It shall be unlawful for any person or entity to operate any motor vehicle with a dynamic braking device engaged within the city.

\* "Dynamic braking device" is defined as a mechanical device installed primarily on trucks and commercial vehicles, which enables the driver to use the vehicle's engine as an air compressor for the purposes of braking. A dynamic braking device is also commonly referred to as a "Jake Brake", Jacobs brake, engine brake or compression brake.

(Code 1981, § 10.24.030; Ord. No. 1119, § 1, 10-24-00; Ord. No. 1126, §§ 1, 2, 5-22-01)

State law reference—Mufflers, prevention of noise, MCA 61-9-403.

**Sec. 22-60. Tires.**

(a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any street any motor vehicle, trailer or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the street. It is also permissible to use tire chains of reasonable proportions, or pneumatic tires with traction surfaces into which have been embedded materials such as wood, wire, plastic or metal, which shall in no instance protrude more than 1/16 inch beyond the tire tread, upon any vehicle, when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid. The use of pneumatic tires with materials embedded as provided in this section shall be permitted only between October 1 and May 31 of each year, except that one such tire may be used for a spare in case of tire failure. School buses equipped with such pneumatic tires may operate from August 15 through the following June 15.

(d) The municipality may, in its discretion, issue special permits authorizing the operation upon a street of farm tractors or other farm machinery, or of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks, the operation of which upon the street would otherwise be prohibited.

(Code 1981, § 10.24.040)

State law reference—Restrictions as to tire equipment, MCA 61-9-406.

**Sec. 22-61. Windshield and windshield wipers.**

(a) No person shall drive any motor vehicle with any sign, poster or transparent material on the front windshield, side wings or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

**ENGINE BRAKING ORDINANCE**

*(sample)*

July 06, 2006

City of Grandview

ORDINANCE NO. 2006-076

## ENGINE BRAKING ORDINANCE

AN ORDINANCE OF THE CITY OF GRANDVIEW, TEXAS, PROHIBITING ENGINE BRAKING AND PROVIDING FOR FINDINGS OF FACT, ENACTMENT PROVISIONS, REPEALER, SEVERABILITY, PUBLICATION, EFFECTIVE DATE, PUBLIC NOTICE & MEETING, ENACTMENT, DEFINITIONS, PROHIBITION, AND ENFORCEMENT, INCLUDING CRIMINAL FINES NOT TO EXCEED \$500 PER OFFENSE

**WHEREAS,** the City Council of the City of Grandview ("City Council") seeks to protect the public safety, preserve the quality of life, and prevent nuisances in the City; and

**WHEREAS,** the City Council finds that the practice of engine braking by diesel trucks (sometimes referred to in common nomenclature as "*jake braking*," but which must not to be confused with the registered trademark "Jake Brake" belonging to the Jacobs Vehicle Systems, Inc.) creates disturbing, excessive and offensive noise when it occurs within the city limits; and

**WHEREAS,** pursuant to Texas Local Government Code Chapter 51 the City Council has the general authority to adopt and publish an ordinance or police regulation that is for the good government, peace or order of the municipality and is necessary or proper for the carrying out a power granted by law to the municipality; and

**WHEREAS,** the City Council finds this Ordinance to be reasonable and necessary.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of Grandview, Texas, that:

### 1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

### 2. ENACTMENT

The laws of the City of Grandview shall hereby read in accordance with *Exhibit A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

### 3. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this



Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

**4. SEVERABILITY**

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

**5. PUBLICATION**

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in and among the records of the City.

**6. EFFECTIVE DATE**

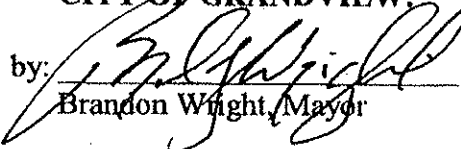
This Ordinance shall be effective immediately upon passage and publication.

**7. PROPER NOTICE & MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**PASSED & APPROVED**, this, the 6<sup>th</sup> day of July 2006, by a vote of 3 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the City of Grandview, Texas.

**CITY OF GRANDVIEW:**

by:   
Brandon Wright, Mayor

**ATTEST:**

  
Sherry Bagwell, Administrative Assistant

**APPROVED AS TO FORM:**

Alan J. Bojorquez, City Attorney

# ENGINE BRAKING ORDINANCE

## SECTION 1. ENACTMENT

### 1.1. Popular Name

This Chapter shall be commonly cited as the "Engine Braking Ordinance."

### 1.2. Scope

This Chapter applies to all property within the incorporated municipal boundaries (i.e., "city limits").

## SECTION 2. DEFINITIONS

### 2.1. General

Words and phrases used in this Chapter shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinance shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

### 2.2. Specific

**City:** the City of Grandview, an incorporated municipality located in Johnson County, Texas.

**Engine Braking:** any method of slowing diesel trucks in a manner that produces a loud noise, particularly by venting the cylinder of the diesel engine midway through its cycle causing the engine, instead of producing power, to absorb power, thereby slowing the truck down dramatically. It shall also include the production of excessive noise produced by engine retarders due to a truck operating with improperly maintained, defective, or modified muffler systems or the use of straight exhaust pipes with no mufflers.

**Person:** any human individual, corporation, company, sole proprietorship, partnership, association, organization, or agency.

### **SECTION 3. PROHIBITION**

- 3.1. It shall be unlawful for any person to engine brake within the city limits.
- 3.2. No person shall engine brake within the city limits.

### **SECTION 4. ENFORCEMENT**

#### **4.1. Civil & Criminal Penalties**

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

#### **4.2. Criminal Prosecution**

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

#### **4.3. Civil Remedies**

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (a) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- (b) a civil penalty up to one hundred dollars (\$100.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and other available relief.

**AN ORDINANCE AMENDING CHAPTER 22 OF THE CODE OF THE CITY OF FORT WORTH, AS AMENDED, BY ADDING SECTION 22-324 PROHIBITING ENGINE BRAKING IN THE CITY LIMITS; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER OF THE CITY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Fort Worth ("City Council") seeks to protect the public safety, preserve the quality of life, and prevent nuisances in the City; and

**WHEREAS**, the City Council finds that the practice of engine braking by diesel trucks (sometimes referred to in common nomenclature as "*jake braking*" but which must not be confused with the registered trademark "Jake Brake" belonging to the Jacobs Vehicle Systems, Inc.) creates disturbing, unreasonable and offensive noise when it occurs within the city limits; and

**WHEREAS**, pursuant to Texas Local Government Code Chapter 51, the City Council has the general authority to adopt and publish an ordinance or police regulation that is for the good government, peace or order of the municipality and is necessary or proper for the carrying out of a power granted by law to the municipality; and

**WHEREAS**, it is advisable to amend Chapter 22 of the Fort Worth Code of Ordinances to add new regulations regarding engine braking; and

**WHEREAS**, the City Council finds this Ordinance to be reasonable and necessary.

**NOW THEREFORE**, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TARRANT COUNTY, TEXAS:

**SECTION 1.**

That Chapter 22 of the Code of the City of Fort Worth is hereby amended herein by adding Section 22-324 "Engine Braking" to Article X, Equipment, to read as follows:

**Sec. 22-324. - Engine Braking.**

- (a) Engine-exhaust braking prohibited. No person may use an engine-exhaust braking system while operating a motor vehicle within the corporate limits of the City of Fort Worth. For the purpose of this section, the term engine-exhaust braking system means an engine-exhaust braking system device which converts diesel-engine power into an air

compressor and when engaged operates to slow the vehicle, creating an unreasonable noise.

(b) Offense. It shall be unlawful and an offense for any person to violate or fail to comply with any provisions hereof. Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00). Each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a misdemeanor.

#### SECTION 2.

That Chapter 22 of the Code of the City of Fort Worth, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

#### SECTION 3.

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

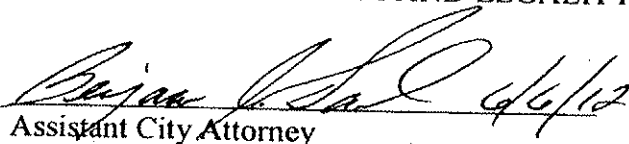
#### SECTION 4.

That the City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption and penalty provision, found in Sec. 1 [Sec. 22-324(b)], of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by City Charter and Section 52.013, Texas Local Government Code.

#### SECTION 5.

That this ordinance shall take effect after its passage and publication as required by law, and it is accordingly so ordained.

APPROVED AS TO FORM AND LEGALITY:

  
Assistant City Attorney

ADOPTED: June 5, 2012

EFFECTIVE: June 11, 2012

*City of Fort Worth, Texas*  
**Mayor and Council Communication**

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**COUNCIL ACTION: Approved on 6/5/2012 - Ordinance No. 20235-06-2012**

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**DATE:** Tuesday, June 05, 2012

**REFERENCE NO.:** G-17604

**LOG NAME:** 20ENGINE BRAKING ORDINANCE

**SUBJECT:**

Adopt Ordinance Amending Chapter 22 of the Code of the City of Fort Worth, as Amended, by Adding Section 22-324 Prohibiting Engine Braking In the City Limits (ALL COUNCIL DISTRICTS)

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**RECOMMENDATION:**

It is recommended that the City Council adopt the attached ordinance amending Chapter 22 of the Code of the City of Fort Worth, as amended, by adding Section 22-324 prohibiting engine braking in the City limits.

**DISCUSSION:**

In recent years, semi-truck engine braking has become an increasing problem for residents of the City of Fort Worth. The noise produced by these diesel engines has become a nuisance to the City's residents, and inevitably it has affected the peace and quiet enjoyment of their homes. Generally, engine braking, means an engine exhaust braking system device which converts diesel engine power into an air compressor and when engaged operates to slow the vehicle, creating an unreasonable noise. By way of comparison, it sounds similar to a jackhammer, however the loudness is between 10 and 20 times the sound pressure level of a jackhammer.

Many cities in Texas have banned engine braking through city ordinance. These cities include Austin, Dallas, Roanoke, Aurora, Boyd, Decatur, Alvord, Alvarado, Keene, Cleburne, Burleson, Grandview, Haslet, Lakeside, Marble Falls, Burnett, Elgin, Redwater, Littlefield, Lake Jacksonville and West Columbia.

Staff discussed the proposed ordinance with several industry leading trucking firms. They include Old Dominion Freight, First Choice Transport, Coffman Tank Trucks Inc., YRC (Yellow Freight and Roadway) and Empire Disposal. The only opposition came from Empire Disposal. They stated the engine brake on their new trucks does not make the noise of other trucks.

If the ordinance is adopted, all police officers will be able to write citations for engine braking. Under the noise ordinance, it was recommended that only certified commercial vehicle officers issue citations for engine braking because they are qualified to explain to a court the technology.

The Texas Department of Transportation has agreed to post signs prohibiting engine braking. Locations are still to be determined.

Adoption of this ordinance will prohibit engine braking within the corporate limits of the City of Fort Worth, by making such conduct unlawful. The violation will be a misdemeanor, and upon conviction a fine of up to \$500.00 will be assessed. Signs notifying motorists of this violation will be posted in problem areas throughout the City, as well as along portions of the interstate.

**FISCAL INFORMATION / CERTIFICATION:**

The Financial Management Services Director certifies that this action will have no material effect on City funds.

**FUND CENTERS:**

**TO Fund/Account/Centers**

**FROM Fund/Account/Centers**

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**CERTIFICATIONS:**

**Submitted for City Manager's Office by:**

Fernando Costa (6122)

**Originating Department Head:**

Douglas W. Wiersig (7801)

**Additional Information Contact:**

Randy Burkett (8712)

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# Reducing Road Noise

Union Township Environmental Commission  
Road Noise Subcommittee



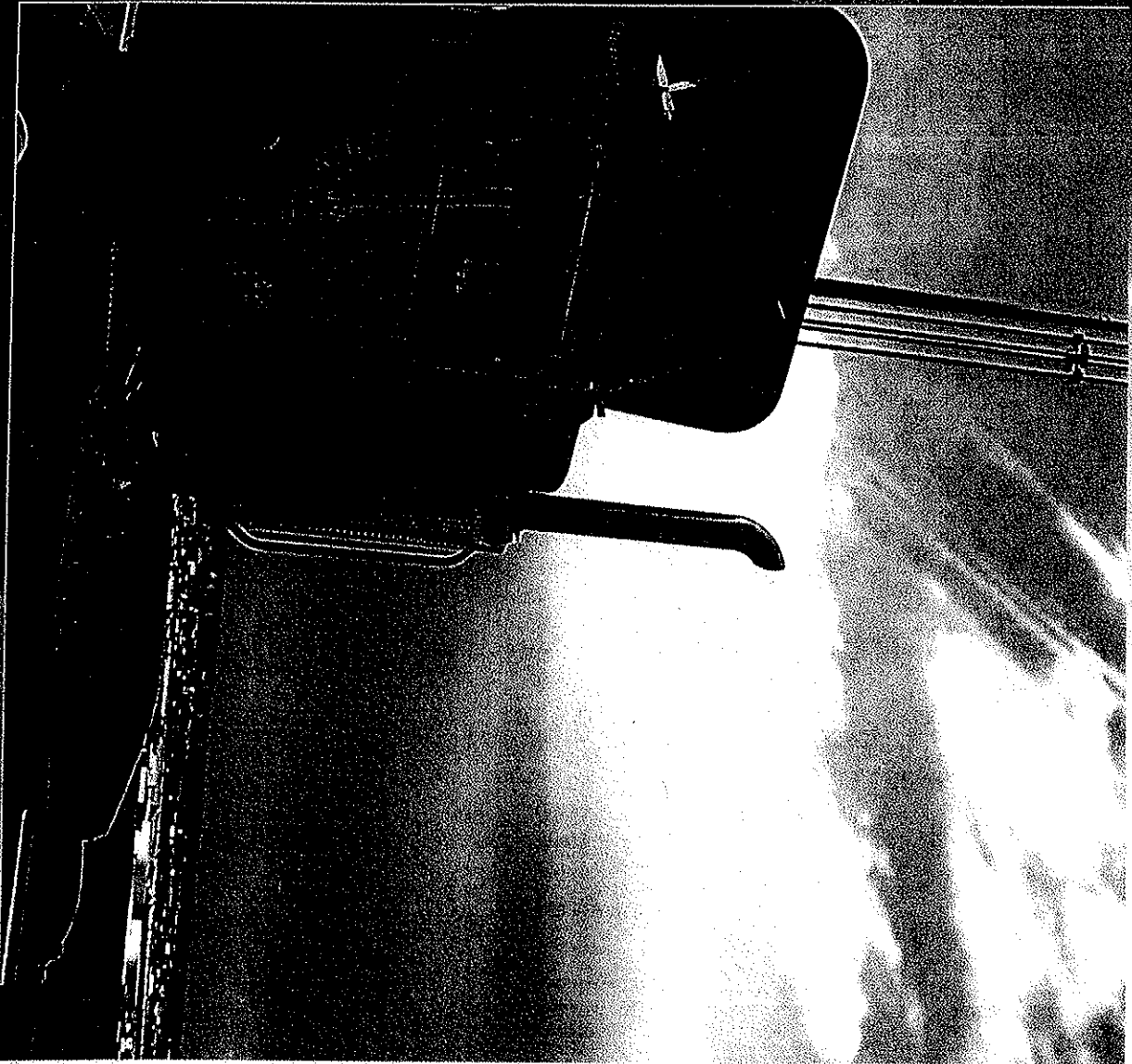
# What is engine braking?

- » Also known as "Jake Braking" (brand name)
- » Almost all trucks now have engine brakes
- » Helps trucks to stop and reduces brake wear
- » The driver engages the engine brake by flipping a switch located on the gearshift.
- » This activates a separate cam that allows the energy (and noise) from compressed engine gases to be exhausted directly to the exhaust pipe. This energy is thus dumped to the exhaust system rather than recovered on what would normally be the power stroke.
- » For trucks with poor mufflers, this results in a loud explosive-like noise similar to a jackhammer but 10-20 times louder.

# Many trucks have ineffective or NO mufflers

- » Why? They like the noise...?
- » One study showed 5.3% of trucks had ineffective mufflers and 2% had NO mufflers (straight pipe exhausts)
- » At 300 trucks per hour, that's 16 trucks with ineffective mufflers every hour that create excessive noise!!

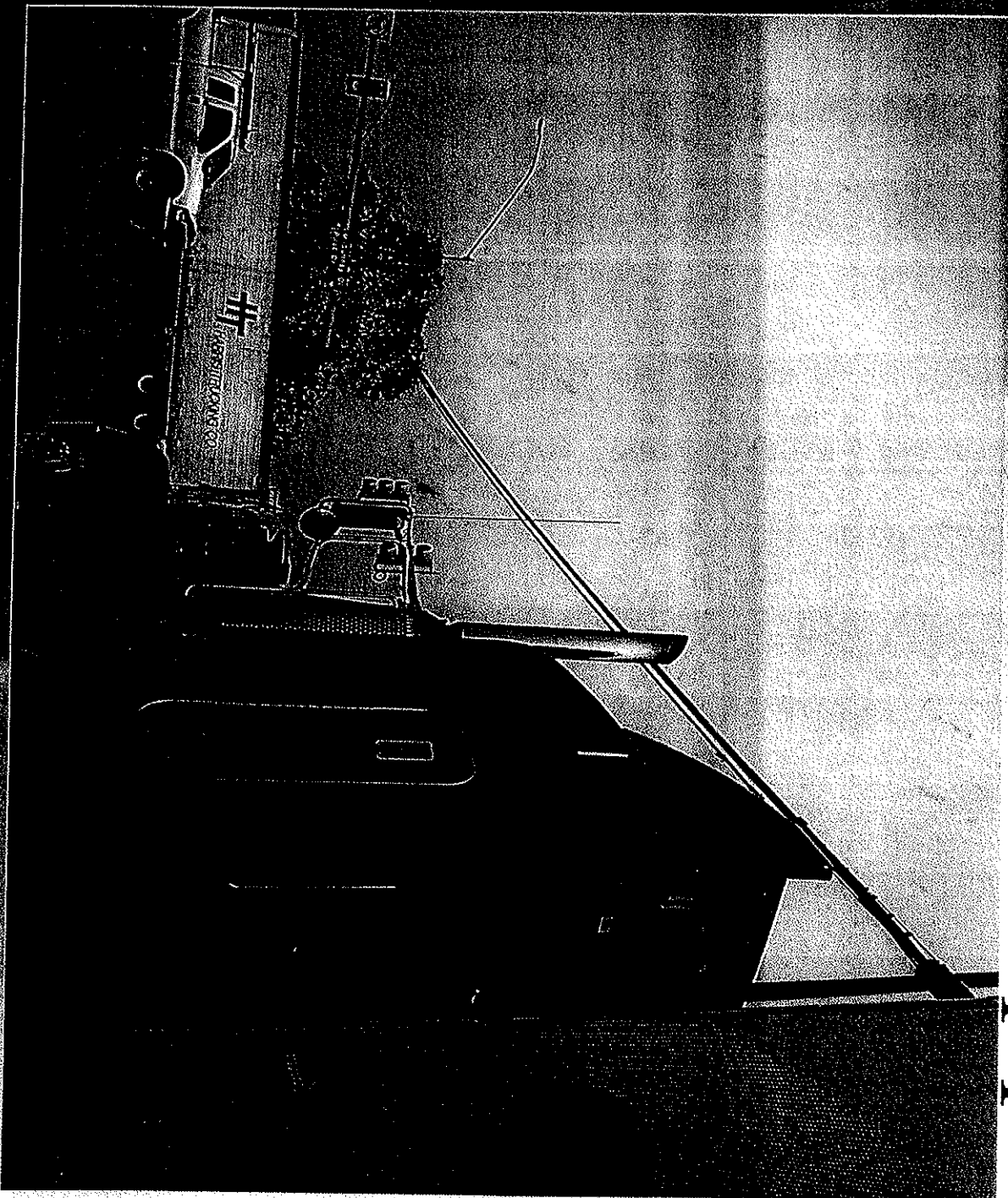
# Normal Muffler



Heat shield +  
Muffler +  
Exhaust and tailpipe are same  
diameter

(Or, could this be one of those  
"fake mufflers", with a  
straight pipe inside???)

# Oversized tail pipe

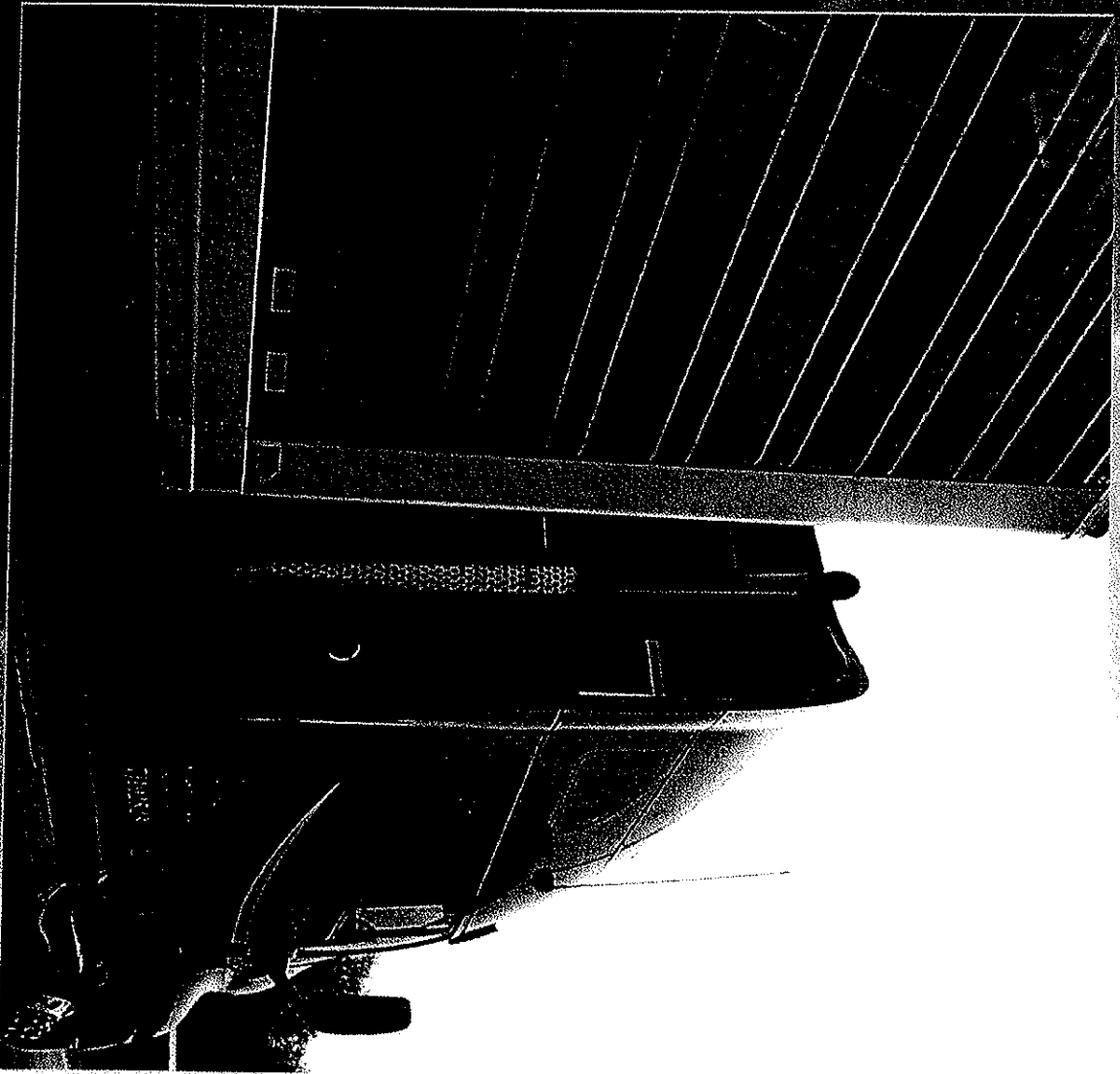


Oversized tail pipe welded to  
muffler outlet

Creates a deeper sound that  
truckers like

Legal or not??

# NO MUFFLER (STRAIGHT STACK)



Only a heat shield, no muffler

When his engine brakes were on,  
we could  
hear this truck from far away!!

He turned off the brakes when he  
saw our camera.

507 PLEASANT STREET - P.O. BOX 128  
MILES CITY, MONTANA 59301-0128  
TELEPHONE 406-234-3054  
FAX 406-234-5864  
Email: bhpc@midrivers.com  
I.D. NO. 81-0497324

# *Brown and Huss, P.C.*

*Attorneys at Law*

*Bruce M. Brown (1922-2000)*

*George W. Huss*

*Erica D. Griffith*

December 12, 2012

Mark Ahner  
13 S. Stacy  
Miles City, Montana 59301

Re: Discharge of firearms at Spotted Eagle

Dear Mark,

Pursuant to your request at last evening's Council meeting, I am enclosing a proposed draft ordinance amending Section 16-43 of the City Code to prohibit the discharge of firearms upon City owned or leased lands within 3 miles of the City limits.

I am also enclosing a 1987 Montana Attorney General's opinion which holds that a city can control the discharge of firearms within 3 miles of its city limits pursuant to the extended jurisdiction provisions of 7-32-4301 MCA and the inclusion of the discharge of firearms as "disorderly conduct" under 45-8-101 MCA. I have enclosed copies of the applicable statutes.

One concern is that the Montana Cadastral mapping programs shows Spotted Eagle as owned by Montana Fish, Wildlife and Parks. I was under the understanding that the City owned Spotted Eagle. Perhaps it just leases the property from FWP. The status of this property should be verified before the amendment is made to the Code.

Yours sincerely,

BROWN and HUSS, P.C.

By:   
George W. Huss

GWH:tot

Enclosures per above

**45-8-351. Restriction on local government regulation of firearms.** (1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) ~~For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns.~~ A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others or to prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317.

History: En. Sec. 1, Ch. 589, L. 1985; amd. Sec. 11, Ch. 759, L. 1991; amd. Sec. 3, Ch. 384, L. 2011.

**45-8-101. Disorderly conduct.** (1) A person commits the offense of disorderly conduct if the person knowingly disturbs the peace by:

- (a) quarreling, challenging to fight, or fighting;
- (b) making loud or unusual noises;
- (c) using threatening, profane, or abusive language;
- (d) ~~discharging firearms, except at a shooting range during established hours of operation;~~
- (e) rendering vehicular or pedestrian traffic impassable;
- (f) rendering the free ingress or egress to public or private places impassable;
- (g) disturbing or disrupting any lawful assembly or public meeting;
- (h) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;
- (i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or
- (j) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101; amd. Sec. 1, Ch. 508, L. 1989; amd. Sec. 8, Ch. 415, L. 1991; amd. Sec. 1693, Ch. 56, L. 2009.

**7-32-4302. Control of disturbances of the peace.** Within the city or town and within 3 miles of the limits thereof, the city or town council has power to prevent and punish intoxication (subject to the limits established in 53-24-106), fights, riots, loud noises, ~~disorderly conduct~~, obscenity, and acts or conduct calculated to disturb the public peace or which are offensive to public morals.

History: En. Subd. 25, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.24, R.C.M. 1935; amd. Sec. 16, Ch. 302, L. 1974; amd. Sec. 1, Ch. 403, L. 1975; R.C.M. 1947, 11-927.



42 Mont. Op. Atty. Gen. 22 (Mont.A.G.), 42 Mont. Op. Atty. Gen. No. 8, 1987 WL 339892

Office of the Attorney General

State of Montana

Opinion No. 8

February 27, 1987

\*1 CITIES AND TOWNS—Extraterritorial authority to regulate discharge of firearms;

HEALTH—Authority of city to enact ordinance regulating discharge of firearms as a health ordinance;

LOCAL GOVERNMENT—Extraterritorial authority of city to regulate discharge of firearms;

MUNICIPAL CORPORATIONS—Mayor's extraterritorial power to enforce firearm discharge ordinance as health ordinance;

MONTANA CODE ANNOTATED—Sections 7-1-4123, 7-4-4306, 7-32-4302, 45-8-101(d), 45-8-343, 45-8-351, 50-2-116;

MONTANA CONSTITUTION—Article XI, section 4(2).

**HELD: 1. A city ordinance regulating the discharge of firearms outside the city limits may not be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to the mayor by section 7-4-4306, MCA.**

**2. A city may adopt an ordinance prohibiting disorderly conduct resulting from the discharge of firearms and enforce the ordinance within three miles of the city limits pursuant to section 7-32-4302, MCA.**

Jim Nugent  
Missoula City Attorney  
201 West Spruce  
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion concerning whether a city ordinance regulating the discharge of firearms outside the city limits may be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to the mayor by section 7-4-4306, MCA. That section provides:

Extraterritorial powers. The mayor has power to exercise such power as may be vested in the mayor by ordinance of the city or town, in and over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

The Missoula City Council has adopted an ordinance prohibiting, with certain exceptions, the discharge of firearms within designated areas which lie outside the city limits but within five miles of the boundaries of the city. The ordinance was enacted in response to concern that hunting and shooting with firearms in developed residential and commercial areas outside the city can endanger persons who reside or recreate within or near those developed areas. The ordinance provides that the city council may designate an area to be included within the geographic scope of the ordinance upon written request of the county commissioners. Your letter states that three areas adjacent to the city have thus far been designated by the council as areas within which the discharge restriction applies.

The City of Missoula is a municipality with general powers and therefore has the legislative power, subject to the provisions of state law, to adopt ordinances required to preserve peace and order and secure freedom from dangerous activities, secure and promote the general public health and welfare, and exercise any power granted by state law. § 7-1-4123, MCA. Powers of incorporated cities such as Missoula are to be liberally construed. Mont. Const., art. XI, § 4(2); *Stevens v. City of Missoula*, 40 St.Rptr. 1267, 667 P.2d 440 (1983). However, since Missoula has chosen to retain general governmental powers rather than to adopt a self-government charter, the city has only those powers expressly given to it by the Legislature. See *D & F Sanitation Service v. City of Billings*, 43 St.Rptr. 74, 713 P.2d 977 (1986).

\*2 In 1985 the Legislature enacted section 45-8-351, MCA, which provides as follows:  
Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any rifle, shotgun, or handgun.

(2)(a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed weapons, the carrying of weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

Subsection (2)(a) of this statute grants the city the express power to regulate the discharge of firearms for public safety purposes. The city's authority to prevent and punish the discharge of firearms is also found in section 45-8-343, MCA, which permits the city to impose a fine in excess of \$25 or a term of imprisonment upon any person who "willfully shoots or fires off a gun, pistol, or any other firearm" within its limits. In addition, the city has the power to adopt an ordinance prohibiting disorderly conduct, which by statutory definition includes disturbing the peace by discharging firearms. §§ 45-8-101(1)(d), 7-32-4302, MCA; see *City of Billings v. Batten*, 42 St.Rptr. 1398, 705 P.2d 1120 (1985); *City of Whitefish v. O'Shaughnessy*, 42 St.Rptr. 928, 704 P.2d 1021 (1985).

I conclude from a reading of these statutes that the Legislature has granted the City of Missoula the authority to adopt ordinances regulating the discharge of firearms. However, as discussed below, I also conclude that an ordinance prohibiting the discharge of firearms may not be adopted as a health ordinance and enforced pursuant to the extraterritorial powers of the mayor as provided in section 7-4-4306, MCA.

There is no doubt that section 7-4-4306, MCA, allows the city to extend its police power five miles beyond the city limits in matters relating to health and quarantine. While the police power jurisdiction of a municipal corporation is generally limited by the territorial boundaries of the municipality, the Legislature may confer on a municipal corporation the right to exercise police power beyond and within a prescribed distance of the municipal limits. However, statutes authorizing the exercise of municipal power beyond the municipal boundaries are strictly construed. See 62 C.J.S. Municipal Corporations § 141; 56 Am.Jur.2d Municipal Corporations § 436.

\*3 Since the Missoula ordinance is obviously not a quarantine ordinance, the question is whether it may be viewed as a health ordinance. While the ordinance does not refer to its purpose, your letter indicates that the city council members have determined that the discharge of firearms is both a public health and a public safety matter and want the ordinance enforced as a health ordinance pursuant to the mayor's extraterritorial powers provided in section 7-4-4306, MCA.

It is well settled that under the guise of police power the state and its municipal subdivisions have the power and duty to do all things necessary to fully protect the public in the preservation of its health and well-being. *Ruona v. City of Billings*, 136 Mont. 554, 323 P.2d 29 (1958). However, neither the Legislature nor the Montana Supreme Court has addressed the definition and scope of the term "health" as it concerns the ordinance authority of a municipality.

While it is true that to the victim of a gunshot wound the discharge of the offending firearm is a "health" matter of utmost concern, I am not persuaded that regulation of the discharge of firearms should be viewed as within the scope of the health ordinance authority of the city. By enacting section 45-8-351(2)(a), MCA, the Legislature has indicated that such regulation is authorized for the purpose of promoting public safety. Municipal power relative to the public safety has been distinguished from municipal power relative to the public health. In general the distinction is between control of causes of personal injury and property damage and control of the causes of disease. Power as to public health will not justify measures as to public safety. See *McQuillin, Municipal Corporations* § 24.220 (3d ed. 1981); *Vincon v. Howe Builders Association of Atlanta*, 213 S.E.2d 890 (Ga.1975).

The terms "health" and "safety" are often used together in statutes and judicial decisions. See, e.g., § 82-4-203(14), MCA; Mont. Const., art. II, § 3; *Ruona v. City of Billings*, supra. However, the terms should be construed as coordinate words when determining either a power of government or a reservation of power. *State v. Clausen*, 148 P. 28, 33 (Wash.1915). The terms are not interchangeable even though they may refer to similar concerns for the public well-being. The provisions of section 50-2-116, MCA, which set forth the powers and duties of local boards of health, further support the view that the term "public health" relates to matters such as sanitation and the control of communicable diseases rather than the prevention of traumatic personal injury resulting from the discharge of firearms. Because the mayor's extraterritorial power under section 7-4-4306, MCA, does not extend to matters of safety as distinguished from health, I conclude that the ordinance in question may not be enforced as a health ordinance beyond the city limits.

This opinion should not be read to mean that the city is without authority to regulate the discharge of firearms outside the city limits. Section 7-32-4302, MCA, gives the city council the express power to prevent and punish disorderly conduct within three miles of the city limits. As mentioned above, discharging a firearm is one of the statutorily enumerated acts which may disturb the peace and constitute the offense of disorderly conduct. § 45-8-101(1)(d), MCA. Although the extraterritorial reach of the city's police power under section 7-32-4302, MCA, is not as extensive as its five-mile jurisdiction under section 7-4-4306, MCA, the Legislature has clearly granted the city the authority to prevent disturbances of the peace which result from the discharge of firearms in developed areas within three miles of the city limits.

**\*4 THEREFORE, IT IS MY OPINION:**

1. A city ordinance regulating the discharge of firearms outside the city limits may not be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to the mayor by section 7-4-4306, MCA.
2. A city may adopt an ordinance prohibiting disorderly conduct resulting from the discharge of firearms and enforce the ordinance within three miles of the city limits pursuant to section 7-32-4302, MCA.

Very truly yours,

Mike Greely  
Attorney General

42 Mont. Op. Atty. Gen. 22 (Mont.A.G.), 42 Mont. Op. Atty. Gen. No. 8, 1987 WL 339892

**ORDINANCE NO. 1236**

**AN ORDINANCE AMENDING SECTION 16-43 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA SO AS TO PROHIBIT THE DISCHARGE OF FIREARMS UPON CITY OWNED OR LEASED PROPERTY WITHIN THREE MILES OF THE CITY LIMITS OF THE CITY OF MILES CITY.**

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

**Section 1.** Section 16-43 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

**“Sec. 16-43. - Discharge of firearms.**

(a) It shall be unlawful for any person to willfully shoot or fire off a gun, pistol or any other firearm within the limits of the city, *or upon any real property owned or leased by the City of Miles City within three (3) miles of the city limits of the City of Miles City.*

(b) Any person who violates this section shall be punishable by a fine not exceeding \$500.00 or by imprisonment in the county jail for a period not exceeding 6 months, or both.

(c) Firearms may be discharged in an indoor or outdoor rifle, pistol, or shotgun shooting range located within the city limits, *or located upon real property owned or leased by the City of Miles City within three (3) miles of the city limits of the City of Miles City,* if the shooting range is approved by the City Council.

(d) Subsection (a) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1, MCA.”

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

Said Ordinance read and put on its passage this 8th day of January, 2013.

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

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

**FINALLY PASSED AND ADOPTED** this 22nd day of January, 2013.

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

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

Form 1860-9  
(January 1988)

## The United States of America

To all to whom these presents shall come, Greeting:

MTM 57774

WHEREAS,

the City of Miles City

is entitled to a Land Patent pursuant to Public Law 97-401 dated December 3, 1982, "An Act to authorize the Secretary of the Interior to convey certain lands near Miles City, Montana, and to remove certain reservations from prior conveyances," for the following described lands:

Principal Meridian, Montana

T. 7 N., R. 47 E.,  
sec. 4, Tract S; and  
sec. 5, Tract Q.

T. 8 N., R. 47 E.,  
sec. 32, lots 9, 17, 21,  
28, 31 and 32; and  
sec. 33, Tract S.

Containing 216.36 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto the City of Miles City the land above described; TO HAVE AND TO HOLD the said land with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said City of Miles City, its successors and assignees, forever;

EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);
2. All oil, gas, coal and other minerals on the land so patented, and to it; or persons authorized by it; the right to prospect for, mine and remove such deposits from the same under applicable law; and
3. The right of prior permittees or lessees to use so much of the surface of said land as is required for mining operations without compensation to the patentee for damages resulting from proper mining operations for the duration of oil and gas lease M 43267, and any authorized extension of that lease (Section 29 of the Act of February 25, 1920, 41 Stat. 449; 30 U.S.C. 186, and the Act of March 4, 1933, 47 Stat. 1570; 30 U.S.C. 124).

SUBJECT TO:

1. A gas pipeline right-of-way granted to Montana Dakota Utilities Company, approved March 25, 1955, pursuant to the Act of February 25, 1920, as amended (41 Stat. 449; 678) over and across a portion of Tract Q in section 5, T. 7 N., R. 47 E., and lots 21, 28 and 31, section 32,

2. A water pipeline right-of-way under the jurisdiction of the United States Fish and Wildlife Service (FWS) for the Miles City National Fish Hatchery. Jurisdiction of the pipeline, which crosses Tract "S" in sec. 4, T. 7 N., R. 47 E., P.M.M., was transferred to FWS on June 3, 1957; and

Patent Number

25-93-0280

Date

4-11-88

## **Flood Control Committee**

### **December 19, 2012**

The **Flood Control Committee** met Wednesday, December 19, 2012, at 5:00 p.m. in the City Hall Conference Room. Present were Committee Chairperson John Hollowell and Committee Members Susanne Galbraith, Jerry Partridge and Dwayne Andrews. Also present were Floodplain Administrator Sam Malenovsky, Public Utilities Director Al Kelm, Representatives from KLJ, Karl Jackson and Tracy Hegg and Recorder HR/Payroll Officer Billie Burkhalter.

All members were present.

#### **1. Review of New Flood Plain Ordinance**

Administrator Malenovsky explained that the State and FEMA have drafted a new ordinance to basically clean up the existing ordinance and make it a little more defined in a few areas.

Administrator Malenovsky requested the following be changed in the ordinance:

Pg 7: Section 1.7 FLOOD PLAIN ADMINISTRATOR – First sentence:

Delete: "A Flood Plain Administrator is hereby officially appointed and is the responsibility of the office of the Mayor".

Change to: "A Flood Plain Administrator is hereby officially appointed by the Mayor and is the responsibility of the office of Public Works".

Pg 9: Section 1.17 DISASTER RECOVERY – Under #1.

Delete "30%" as this is a typo and replace it with "50%".

Pg 10 through 13: Section II. DEFINITIONS:

Add: (in existing alphabetical order)

"Accessory Structure – A structure that is accessory to, or in addition to, any use that is permitted in these regulations (e.g. a picnic shelter would be accessory to a campground). An Accessory Structure is secondary to the primary use that is permitted and complies with all other conditions imposed by these regulations and otherwise provided for by law."

"DFIRM – Digital Flood Insurance Rate Map dated July 22, 2010 published by FEMA. The map on which FEMA has delineated the 100-year floodplain, the Base Flood Elevations (BFE) and the risk premium zones."

"Drain way – Any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well defined banks."

"Dwelling- A permanent building for human habitation, a place for living purposes."

"Elevated Building – for insurance purposes, a non-basement building which

has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.”

“Flood Insurance Study – The report in which FEMA has provided flood profiles, as well as the Flood Boundary/Floodway Map and the water surface profiles.”

“Freeboard – a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for many unknown factors that could contribute to flood heights greater than the height calculated for a selected six flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.”

“Levee – Man-made embankments, usually earthen, designed and constructed in accordance with the sound engineering practices to contain, control, or divert the flow of water to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA DFIRMS as provided fold protection, the levee structure must meet the requirements set forth in 44 CFR 65.10”

“Manufactured Home – A structure, also referred to as a mobile home, that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. This does not include “recreational vehicles”.

Pg 15: Section 3.2 FEES: Delete entire section and return to what was recommended by the State originally.

Add: “Reasonable fees may be adopted for permit applications, notices, variances, inspections, certifications or other administrative actions required by these Regulations.”

Pg 17: Section 4.1: REGULATED FLOOD HAZARD AREAS; Under #1.

Add: “The Flood Insurance Study for the City of Miles City, Montana” dated July 22, 2010 with the most effective Digital Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (DFIRM and/or FBFM) dated July 22, 2010.”

Pg 28: Section 8.5: FLOOD PLAIN PERMIT APPLICATION APPROVAL : Delete the entire #2 sentence and replace with “Every Permit issued shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The floodplain administrator is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated. The request must be made at least 30 days prior to the completion deadline;”

Add #9. “The Floodplain Administrator is authorized to suspend or revoke a

permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.”

Pg 45: Section 12.5 DECISION: Board of Adjustments will be used

The Committee was in agreement to follow Administrator Malenovsky's recommendations to follow the State's recommendations for changes. (see attached) Committee Member Partridge stressed to the Committee that the Council needs to support Floodplain Administrator Malenovsky.

*\*\* Committee Member Andrews moved to approve all changes made by Floodplain Administrator Malenovsky and forward to the City Attorney, seconded by Committee Member Partridge and, on roll call vote, motion passed unanimously, 4-0.*

## **2. Update on Flood Plain Assessment**

Representatives from KLJ, Karl Jackson and Tracy Hegg, will have the contract ready for the Committee's review at the next scheduled meeting on January 16<sup>th</sup>, 2013, @ 6 p.m.

## **2. Requests of Citizens**

Al Kelm, 17 S. 8<sup>th</sup>, stated he thought everyone who had purchased Flood Insurance would be grandfathered in and would not see an increase to their rates. He was surprised to see this was not the case.

## **3. Adjournment**

*\*\* Councilperson Partridge moved to adjourn the meeting, seconded by Councilperson Andrews and passed unanimously, 4-0.*

There being no further business, the Committee adjourned at 6:55 p.m.

Respectfully Submitted,

Flood Control Committee Chairperson

\_\_\_\_\_  
Billie D. Burkhalter, Recorder

\_\_\_\_\_  
John Hollowell, Chairperson





# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community Miles City C.I.D. 300014 State Montana

Reviewed by: Traci Sears Date of Review: 12/18/2012

Item Description (Section reference to the NFIP Regulations follows)	Notes	Applicable Ordinance Section/Comments
the degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.		1.11
8. Severability section. (e.g., If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of the ordinance shall not be affected.)		1.12
9. Disclosure Provisions (ARM 36.15.204(2)(g))		1.13
10. Amendment of Regulations		1.14
11. Public Records 44 CFR 60.3(b)(5)(iii) & 44 CFR 59.22 (a)(9)(iii)		1.15
12. Land Division and Subdivision Review – listed in community Subdivision and Land Division Regulations a. Require base flood elevation data for subdivision proposals or other developments greater than 50 lots or 5 acres. [60.3(b)(3)]		1.16
13. Review subdivision proposals and other development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding [60.3(a)(4)]. If a subdivision or other development proposal is in a flood-prone area, assure that: (a) Such proposals minimize flood damage. [60.3(a)(4)(i)]		1.16
(b) Public utilities and facilities are constructed so as to minimize flood damage. [60.3(a)(4)(ii)]		1.16
(c) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities designed and/or located to prevent water entry to accumulation. [60.3(a)(3)(iv)]		1.16
(d) Adequate drainage is provided. [60.3(a)(4)(iii)] - In Zones AO and AH, require drainage paths around structures on slopes to guide water away from structures. [60.3(c)(11)]		1.16
14. Disaster Recovery	Change #1 back to 50% and #2 take out the first word	1.17

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community Miles City C.I.D. 300014 State Montana

Reviewed by: Traci Sears Date of Review: 12/18/2012

Name/Description (Section Reference to the NFIP Regulations follows)	Notes	Applicable Ordinance Section/Ordinances
	Where	
<b>DEFINITIONS:</b>		
15. Definitions: [59.1] <input checked="" type="checkbox"/> 100-year Flood <input checked="" type="checkbox"/> Alteration <input checked="" type="checkbox"/> Artificial Obstruction <input checked="" type="checkbox"/> Base Flood; <input checked="" type="checkbox"/> Base Flood Elevation; <input checked="" type="checkbox"/> Basement (suggested) <input checked="" type="checkbox"/> Channel <input checked="" type="checkbox"/> Crawl Space (suggested) <input checked="" type="checkbox"/> Development; <input checked="" type="checkbox"/> Encroachment <input checked="" type="checkbox"/> Encroachment Analysis (suggested) <input type="checkbox"/> Enclosure (?) <input checked="" type="checkbox"/> Establish <input type="checkbox"/> Existing manufactured home park or subdivision; (?) <input type="checkbox"/> Existing Structures (?) <input type="checkbox"/> Existing use or Artificial Obstruction (?) <input type="checkbox"/> Expansion to an existing manufactured home park or subdivision; (?) <input checked="" type="checkbox"/> FEMA (suggested) <input checked="" type="checkbox"/> Flood Plain <input checked="" type="checkbox"/> Flood of 100 Year Frequency (Base Flood) <input checked="" type="checkbox"/> Flood Fringe <input checked="" type="checkbox"/> Floodway <input checked="" type="checkbox"/> Flood Plain Administrator <input checked="" type="checkbox"/> Flood Proofing; <input checked="" type="checkbox"/> Lowest Floor; <input checked="" type="checkbox"/> Manufactured Home; <input checked="" type="checkbox"/> Manufactured Home Park or Subdivision; <input checked="" type="checkbox"/> New Construction; <input checked="" type="checkbox"/> New Manufactured Home Park or Subdivision; <input checked="" type="checkbox"/> Owner <input checked="" type="checkbox"/> Recreational Vehicle; <input checked="" type="checkbox"/> Regulated Flood Hazard Area <input checked="" type="checkbox"/> Residential	Also included the following definitions:  1. Accessory Structures 2. DNRC 3. DFIRM 4. Drain way 5. Dwelling 6. Elevated Building 7. FIS 8. Freeboard 9. Levee  **Change order of Riprap and Residential **	Section 2

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community Miles City C.I.D. 300014 State Montana

Reviewed by: Traci Sears Date of Review: 12/18/2012

Item Description (Section reference to the NFIP Regulations follows)	Notes	Applicable Ordinance Section/Comments
<input checked="" type="checkbox"/> Riprap <input checked="" type="checkbox"/> Scour Depth <input checked="" type="checkbox"/> Structure; <input checked="" type="checkbox"/> Substantial Damage; <input checked="" type="checkbox"/> Substantial Improvement; <input checked="" type="checkbox"/> Suitable Fill <input checked="" type="checkbox"/> Violation;		
<b>FORMS AND FEES</b>		
16. Which Flood Plain permit application form is the community using and what is the fee associated with this activity? Where is this information located?	Joint Application	3.1 (1)
17. Does the community use a Flood Plan permit Compliance Report?		3.1 (2)
18. Is the community using a separate Variance application form and what is the fee associated with the activity? Where is this information located?		3.1 (3)
19. Is the community using a separate Appeal form and what is the fee associated with the activity? Where is this information located?		3.1 (4)
20. Is the community using a separate Flood Plain Emergency Notification form? Where is this information located?		3.1 (5)
21. Does the community have a Complaint Form? Where is this information located?		3.1(6)
<b>JURISDICTIONAL AREA</b>		
22. Adopt or reference correct Map and date. [60.3(b)]		4.1 (1)
23. Adopt or reference correct Flood Insurance Study and date. [60.3(c), (d), and/or (e)]		4.1 (1)
24. Interpretation of Flood Plain Boundaries		4.2
25. Alteration of Jurisdictional Area		4.3
<b>USES ALLOWED WITHOUT A PERMIT WITHIN THE JURISDICTIONAL AREA</b>		
26. Uses allowed without a permit listed for Floodway and Flood Fringe or Regulations Flood Hazard Areas without Floodway. (ARMs)		Section 5
27. In A1-30, AH, and AE Zones, all recreational vehicles to be placed on a site must (i) be elevated and anchored; OR		5.1 (4) & 10.3

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community Miles City C.I.D. 300014 State Montana

Reviewed by: Traci Sears Date of Review: 12/18/2012

Item Description (Section reference to the NFIP Regulations follows)	Notes	Applicable Ordinance Section/Comments
(ii) be on the site for less than 180 consecutive days; OR (iii) be fully licensed and highway ready. [60.3(c)(14)]		
<b>PROHIBITED USES, ACTIVITIES AND STRUCTURES WITHIN THE JURISDICTIONAL AREA</b>		
28. Prohibited uses within the Regulated Flood Hazard Area. (MCA & ARMs)		Section 6
<b>PERMIT APPLICATION REQUIREMENTS</b>		
29. Framework for permit requirements.		Sections 7 and 8
30. Require permits for all proposed construction or other development including placement of manufactured homes to determine whether such construction or development is in a floodplain. [60.3(a)(1)]		7.1
31. Require permits for all proposed construction and other development within SFHAs. [60.3(b)(1)]		7.1
32. Assure that all other State and Federal permits are obtained. [60.3(a)(2)]		7.2 (4)
<b>APPLICATION EVALUATION</b>		
33. Framework for application review and issuing permits.		Section 8
34. Review permits to assure sites are reasonably safe from flooding and require for new construction and substantial improvements in flood-prone areas [60.3(a)(3)]:		Section 8 & 10.2(2)
35. Determine that application is complete.		8.1 (3) & (4)
36. Public Notification (ARM 36.15.204(2)(c))		8.2
37. In riverine areas, notify adjacent communities of watercourse alterations and relocations. [60.3(b)(6)]		8.2 (5)
38. Permit Criteria, Decision, and Floodplain Application Approval should be addressed		Section 8
39. Established time limit for completion of projects or development.		8.5 (2)
40. Is certificate of compliance report required?		8.5 (7)
41. Are Elevation Certificates mentioned? - Where BFE data are utilized in Zone A, obtain and maintain records of the lowest floor and floodproofing elevations for new and substantially improved construction. [60.3(b)(5)]		8.5 (7)
<b>DEVELOPMENT STANDARDS, FLOODWAY, CHANNEL REVISIONS</b>		
42. Encroachment analysis - In a regulatory floodway, prohibit any encroachment, which would cause any increase		Section 9 -

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community Miles City C.I.D. 300014 State Montana

Reviewed by: Traci Sears Date of Review: 12/18/2012

Item Description (Item reference to the NFIP Regulations follows)	Notes	Applicable Minimum Action/Comments
in the Base Flood level unless hydrologic and hydraulic analyses prove that the proposed encroachment would not increase flood levels during the Base Flood discharge. [60.3(d)(3)]		throughout 9.2(1)
43. Designate a regulatory floodway which will not increase the Base Flood level more than 0.50 foot. [60.3(d)(2)]		9.2 (3)
44. Maintain the carrying capacity of an altered or relocated watercourse. [60.3(b)(7)]		9.2 (3)
45. The danger to life and property due to backwater or diverted flow caused by the obstruction or use; (MCA 76-5-406) (ARM 36.15.216(2)(a))		9.2 (4)
46. The danger that the obstruction or use may be swept downstream to the injury of others; (MCA 76-5-406) (ARM 36.15.216(2)(b))		9.2(5)
<b>DEVELOPMENT STANDARDS IN FLOODWAYS</b>		
47. Mining of Material Requiring Excavation from Pits and Pools.		9.3
48. Railroad, Highway and Street Stream Crossings		9.4
49. Limited Filling for Road and Railroad Embankments		9.5
50. Buried or Suspended Utility Transmission Lines		9.6
51. Storage of Materials and Equipment		9.7
52. Domestic Water Supply Wells		9.8
53. Buried and Sealed Vaults for sewage disposal in campgrounds and recreational areas.		9.9
54. Public and Private Campgrounds		9.10
55. Structures Accessory or Appurtenant		9.11
56. Construction of or modifications to surface water diversions		9.12
57. Flood Control and Bank Protection Measures		9.13
58. Stream and Bank Restoration		9.14
<b>DEVELOPMENT STANDARDS IN FLOODPLAIN - GENERAL REQUIREMENTS</b>		
59. In A Zones, in the absence of FEMA BFE data and floodway data, obtain, review, and reasonably utilize other BFE and floodway data as a basis for elevating residential structures to or above the base flood level, and for floodproofing or elevating non-residential structures to or above the base flood level. [60.3(b)(4)]		10.2 (1)

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community Miles City C.I.D. 300014 State Montana

Reviewed by: Traci Sears Date of Review: 12/18/2012

Item Description (Reference to the NFIP Regulations follows)	Notes	Applicable Ordinance Section/Comment
60. Use of flood-resistant materials. [60.3.(a)(3)(ii)]		10.2 (3)
61. Construction methods and practices that minimize flood damage. [60.3(a)(3)(iii)]		10.2 (2)
62. Structures or fill must not be prohibited by any other statute, regulation, ordinance, or resolution; and must be compatible with subdivision, zoning and any other land use regulations, if any; (ARM 36.15.701(3)(a)) ((ARM 36.15.701(3)(b))		10.2 (3)
63. Anchoring (including manufactured homes) to prevent flotation, collapse, or lateral movement of the structure. [60.3(a)(3)(i)]		10.2 (4)
a. Require all manufactured homes to be elevated and anchored to resist flotation, collapse, or lateral movement. [60.3(b)(8)]		10.2(4)
64. Require that for floodproofed non-residential structures, a registered professional engineer/architect certify that the design and methods of construction meet requirements at 60.3(c)(3)(ii). [60.3(c)(4)]		10.2(5)
65. Electrical system requirements per (ARM 36.15.901)		10.2(7)
66. Heating and Cooling System requirements per (ARM 36.15.902)		10.2(9)
67. Plumbing System requirements per (ARM 36.15.903)		10.2(10)
68. Structural Fill Requirements as per ARMs		10.2(11)
69. Require new and replacement water supply and sanitary sewage systems to be designed to minimize or eliminate infiltration. [60.3(a)(5) and 60.3(a)(6)]		10.2(12)
70. Require onsite waste disposal systems be designed to avoid impairment or contamination. [60.3(a)(6)(ii)]		10.2(12)
<b>DEVELOPMENT STANDARDS IN FLOOD PLAIN RESIDENTIAL REQUIREMENTS</b>		
71. In A1-30, AH, and AE Zones, all recreational vehicles to be placed on a site must (i) be elevated and anchored; OR (ii) be on the site for less than 180 consecutive days; OR (iii) be fully licensed and highway ready. [60.3(c)(14)]		5.1 (4) & 10.3

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community Miles City C.I.D. 300014 State Montana

Reviewed by: Traci Sears Date of Review: 12/18/2012

Item Description (Location reference to the NFIP Regulations follows)	Notes	Applicable Ordinance Edition/Community
73. Lowest Floor Elevation two feet above BFE. (ARM 36.15.702)		10.3(1)
a. Require all manufactured homes to be elevated and anchored to resist flotation, collapse, or lateral movement. [60.3(b)(8)]		10.3(4)
b. Require all new and substantially improve <u>residential</u> structures within A1-30, AE, and AH Zones have their lowest floor (including basement) elevated to or above the Base Flood Elevation. [60.3(c)(2)]		10.3
c. <sup>2</sup> In AO Zones, require that new and substantially improved <u>residential</u> structures have their lowest floor (including basement) to or above the highest adjacent grade at least as high as the FIRM's depth number. [60.3(c)(7)]		10.3
d. Require that manufactured homes placed or substantially improved within A1-30, AH, and AE Zones, which meet one of the following location criteria, to be elevated such that the lowest floor is to or above the Base Flood Elevation and be securely anchored: 1. outside a manufactured home park or subdivision; (ii) in a new manufactured home park or subdivision; (iii) in an expansion to an existing manufactured home park or subdivision; iv) on a site in an existing park which a manufactured home has incurred substantial damage as a result of a flood. [60.3(c)(6)]		10.3(4)
74. Crawl space designs		10.2 (2)
75. Lesser amount of fill or alternative flood proofing measures as per (ARM 36.15.702(a))		10.3(3)
76. In A-1-30, AH, and AE Zones, require that manufactured		

<sup>2</sup> Item 30 and 32 are not required if the community has no AO Zones.



# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community Miles City C.I.D. 300014 State Montana

Reviewed by: Traci Sears Date of Review: 12/18/2012

Item Description (Reference to the NFIP Regulations follows)	Notes	Applicable Insurance Section/Minimum
homes to be placed or substantially improved in an <u>existing</u> manufactured home park to be elevated so that (i) the lowest floor is at or above the Base Flood Elevation; OR (ii) the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored. [60.3(c)(12)]		10.3(4)
<b>VARIANCE</b>		
77. Require that new and substantially improved <u>non-residential</u> structures within A1-30, AE, and AH Zones have their lowest floor elevated or floodproofed to or above the Base Flood Elevation. [60.3(c)(3)]		10.4
(a) In AO Zones, require new and substantially improved <u>non-residential</u> structures have their lowest floor elevated or completely floodproofed above the highest adjacent grade to at least as high as the depth number on the FIRM. [60.3(c)(8)]		10.4
78. Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are used solely for parking of vehicles, building access or storage in an area other than a basement and which is subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing the entry and exit of floodwaters in accordance with the specifications in 60.3(c)(5). (Openings requirement)		10.4
78. Wet and Dry Flood Proofing as per CFR and ARMs		10.4 (1) & (2)
<b>EMERGENCY</b>		
79. Emergency provisions		Section 11
<b>VARIANCE</b>		
80. Variance defined		12.1
81. Variance section with evaluation criteria and insurance notice. [60.6(a)]		Section 12
82. Public Notification (ARM 36.15.204(2)(c))		12.3

# NATIONAL FLOOD INSURANCE PROGRAM COMMUNITY FLOODPLAIN MANAGEMENT REGULATIONS REVIEW CHECKLIST

Community Miles City C.I.D. 300014 State Montana

Reviewed by: Traci Sears Date of Review: 12/18/2012

Item Description (Section reference in the A.F.P. Regulations follows)	Notes	Applicable Ordinance Section/Comment
83. Variance board specified	Change to specific board	12.5
84. Copy of Decision sent to DNRC		12.5(2)
85. Judicial Review		12.6
<b>APPEALS</b>		
86. Appeal defined		13.1
87. Appeal board specified		13.1
88. Notice requirement		13.3
<b>ENFORCEMENT</b>		
89. Adequate enforcement provisions (specifying actions the community will take to assure compliance).	Clarify what Board does the review	Section 14
<b>GENERAL</b>		
90. Penalties for violations listed		Section 15

Comments     

- 1) 1.7 - May want to state "officially appointed by the Mayor...."
- 2) pg. 8 change information box into number continuation of Section 1.16
- 3) pg. 10 – Go ahead and keep as information or simply take the box boarder away.
- 4) 3.2 – We encourage communities to put fees in a separate document in case changes need to be made quickly and without having to go through another ordinance update for a quick fee change.
- 5) pg. 19 – Same as page 8 – it is highly suggested to change the information box into number continuation of Section 4.3
- 6) Removal of reference words **High Standard** throughout the document recommended.

## Human Resources Committee December 28, 2012

The **Human Resources Committee** met Friday, December 28, 2012, at 12:00 p.m. in the Conference Room at City Hall. Present were Chairperson John Uden, Committee Members, Bill Melnik, and John Hollowell. Also present were, Deputy City Clerk Connie Watts, Deputy City Attorney Erica Griffith and Recorder HR/Payroll Officer Billie Burkhalter. Committee Member Dwayne Andrews was absent.

**1. Roll Call:**

- Noted above

**2. Final Review of deputy City Clerk's position description:**

Chairperson Uden explained he spoke to City Attorney Huss and apparently there was still an issue with the Deputy City Clerks position description as the word preferred was still in it but the rest of the position description was consistent with what the Committee and City Clerk decided was appropriate.

*\*\* Chairperson Uden moved to delete the word "preferred" on page 4 under Education and Experience and replace it with "or an". Motion seconded by Committee Member Melnik and on roll call vote the motion passed unanimously.*

**3. Review job descriptions of City Attorney:**

Chairperson Uden explained the job description was prepared by the current City Attorney so it must be correct.

*\*\* Committee Member Hollowell moved to approve the City Attorney job description. Motion seconded by Committee Member Melnik and on roll call vote the motion passed unanimously.*

**4. Request of Citizens**

- None

**5. Committee members' comments**

Committee Member Hollowell questioned how the grievance's were progressing and questioned what was going on with the Public Works Director position. Chairperson Uden replied the grievances were progressing and he didn't know if the Public Works Director position had even been advertised. HR Officer Burkhalter stated that the position had been advertised. The City received two internal applications and the Mayor had been informed and she had been advised by him that he would address this after the New Year. Chairperson Uden stated, based on policy and procedure, there will be an interview of these two individuals and he personally does not feel the Mayor should be on the interview panel because he has no knowledge of the position.

**5. Adjournment**

**\*\*** *Chairperson Uden moved to adjourn the meeting. The motion was seconded by Committee Member Uden and passed. The meeting was adjourned at 12:10 p.m.*

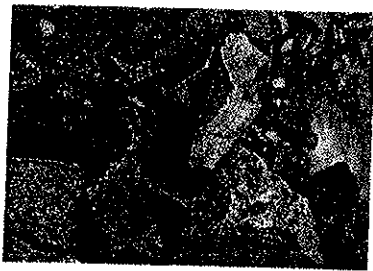
Respectfully submitted,

---

Billie D. Burkhalter, Recorder

---

Chairperson John Uden



## Tumblewood Development Inc.

PO Box 743  
Lewistown Mt. 59457  
406-583-8375 (fax)  
406-366-1424 (cell)  
tmbwod@gmail.com

November 17, 2012

Miles City Board of Health:

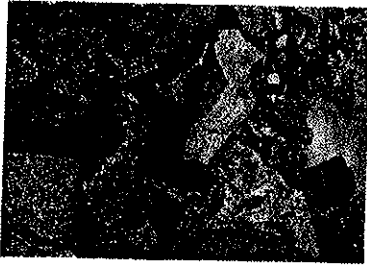
Tumblewood Development is proposing to provide Contract Sanitarian Services for Miles City within the administrative framework of the employing agency and under the supervision of the City Board of Health in the environmental health program of assigned areas, and shall be responsible for:

1. Inspect the following types of licensed establishment within its jurisdiction on an annual basis: Food service, taverns, meat markets, food manufacturers, public accommodations, swimming pools, spas, and other water features, trailer courts and campgrounds, daycare centers, schools and other health related establishments as required by Montana Department of Public Health & Human Services (DPHHS). Other inspections may be required. Inspection year (DPHHS) ends December 31 2012 and a new year starts January 1 2013.
2. Issuing septic system permits on City properties and inspections of installed septic systems. Conduct DEQ Subdivision Review on all submitted City divisions along with enforcement of State and City regulations for storm and sewage disposal.
3. Validate State licenses issued by DPHHS in accordance with MCA Title 50.
4. Submit a list of establishments inspected to DPHHS and the City quarterly. Lists must be submitted in the format provide or approved DPHHS.
5. On at least a quarterly basis, notify the State Department of Health of any establishments closing and/or any newly operating establishments of which the Board of Health is made aware but that may not have obtained a license.
6. Make all inspections for sanitary conditions using applicable environmental health rules and regulations.
7. Submit all necessary forms and paperwork to the DPHHS and MDEQ on approved forms with duplicate documentation to be provided to the City of Miles City.

Yearly inspections will amount to one hundred and forty plus (140+) as well as other unplanned inspections as the need arises from new construction and unplanned civic events. Tumblewood will maintain internet and email accounts that are accessible to members of the Miles City Health Board at all times.

Tumblewood will provide transportation and lodging for sanitarian in all activities representing the City and will maintain a current working knowledge of the theories, principles and practices of environmental sanitation, federal, state, and local legislation and regulations, community resources and agency policies and procedures.

*Michael S. Rinaldi RS*  
Environmental Consulting for Governmental Agencies and Private Concerns



Tumblewood Development Inc.

PO Box 743  
Lewistown Mt. 59457  
406-583-8375 (fax)  
406-366-1424 (cell)  
tmblwod@gmail.com

Possess the ability too thoroughly investigate sanitation problems, to establish and maintain effective working City Health Board Members, other agencies and the public; along with ability to accept and utilize supervision.

Upon review of the licensed establishments, subdivision activity and potential, along with septic system installation and main line connections if needed; Tumblewood Development would propose a bid for sanitarian services only to Miles City this does not include any contract for Code Enforcement Officer:

**\$33,000.00 for full inspection year 2013**

Note\* Tumblewood Development Inc. will be changing to Tumblewood Environmental Inc sometime after the first of the year.

Sincerely

Michael Rinaldi RS/NREHS  
Tumblewood Development Inc.

## Rebecca Stanton

---

**From:** Butch Grenz  
**Sent:** Wednesday, January 02, 2013 5:56 PM  
**To:** Rebecca Stanton  
**Subject:** FW: 1/22/2013 council agenda

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**From:** Ken Stabler [mailto:[kstabler@stablersteel.com](mailto:kstabler@stablersteel.com)]

**Sent:** Wednesday, January 02, 2013 4:24 PM

**To:** Butch Grenz

**Subject:** 1/22/2013 council agenda

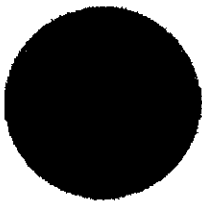
Butch,

I would like to ask you to put me on the agenda for the council meeting of 1/22/2013 if you would please. I would like to address the council regarding the vacant lots behind Tire Rama, specifically lots 28, 29, 30, 31, and 32. As you may be aware, I have been pursuing these lots for going on 5 years now. We began discussion with John Marks in 2008. In 2010, we came to an agreement with the finance committee and city council to approve our draft lease by unanimous decision. Former Mayor Whalen, then refused to sign the lease and it has been in limbo since that time. Councilman Ahner has met with me a couple of times recently regarding this issue and suggested that the city would now be willing to put this property up for competitive bid. My response to this is why? I've been actively pursuing this for years, have an agreement in writing that passed both the finance committee and city council by unanimous decision, but was not consummated by signature of the former Mayor, or resolution of the council.

My question to the council is why, if they are trying to promote business in Miles City, would a current business owner interested in expanding that business be treated in this manner?

Thanks for allowing me this opportunity.

Thanks,  
Ken Stabler



---

Ken Stabler Trucking & Steel  
406-874-7428  
406-874-9389 fax

## Rebecca Stanton

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**From:** Rani Alhafez  
**Sent:** Thursday, January 03, 2013 2:26 PM  
**To:** 'Rebecca Stanton'  
**Subject:** RE: City Council Agenda

Dear Rebecca,

Thank you for your email.

Happy New Year.

I am the coordinator for a suicide prevention community based media project:

Please check below links for more info.

<http://letstalkmilesity.org/events.html>

<http://ghef.org/suicideprevention.php>

I would like to talk for two minutes about our project.

Best Wishes;  
Ronny Hafez - Office Coordinator  
Global Health Equity Foundation  
615 Main St  
Miles City, MT 59301  
406-234-5082



**Global Health  
Equity Foundation**  
research · advocacy · capacity building

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**From:** Rebecca Stanton [<mailto:cityclerk@milesity-mt.org>]  
**Sent:** Thursday, December 13, 2012 2:28 PM  
**To:** [connect@ghef.org](mailto:connect@ghef.org)  
**Subject:** City Council Agenda

Ronnie,

Please note the email address and once I receive your email back, I will place you on the City Council Agenda under Request of Citizens. It is the Mayor's agenda and he does have the right to approve or disapprove your item.

Thanks and I look forward to meeting you.



## Rebecca Stanton

---

**From:** Dianna Broadie  
**Sent:** Monday, December 10, 2012 10:26 AM  
**To:** Butch Grenz  
**Cc:** Rebecca Stanton  
**Subject:** term ends - Preservation Commission

It came to our attention after last meeting that two of the Preservation Commission members have a term that ends. Kathy Doeden and Melissa Hartman. I am requesting for our chair that you place these appointments on the next Council agenda and would request that you re-appoint the same 2 individuals.

Appointments for this commission is made by the Mayor with the approval of City Council.

*Dianna Broadie, AICP*

Director of Planning & Community Services  
Miles City, MT 59301  
406-234-6339

**ORDINANCE NO. 1201**

**AN ORDINANCE AMENDING SECTIONS 2-26 AND 2-27 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA RELATING TO THE PROCEDURES FOR ADOPTION OF ORDINANCES AND EMERGENCY ORDINANCES.**

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

**Section 1.** Section 2-26 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

**“Sec. 2-26. Introduction; reading; adoption upon first reading; referral to committee; public hearing, and final adoption.**

All ordinances must be submitted in writing and upon motion of a member of the city council at any regular council meeting, or at any special council meeting duly called for such purpose. Upon second of the motion to adopt, the mayor shall then and there cause the proposed ordinance to be read and it shall be submitted to the city council for adoption upon first reading. If upon the first reading, the ordinance is adopted by a majority vote of the council members present at the meeting, the proposed ordinance shall be referred by the mayor to a suitable committee, which shall take the proposed ordinance under advisement and consideration until the next regular meeting of the city council, no earlier than 12 days after the date of the initial adoption upon first reading, at which time such committee shall report the proposed ordinance back to the council together with its report thereon. After the first reading and adoption, the ordinance must be posted and copies must be made available to the public. A public hearing, after published notice, shall be held upon the adoption of the ordinance prior to the second reading of the ordinance. The public hearing and second reading may occur at the same council meeting. Following public hearing, the proposed ordinance shall then be read for the second time and shall thereupon be ready for final passage and adoption by a majority vote of the council members present at the meeting. An ordinance passed may not contain more than one comprehensive subject, which must be clearly expressed in its title, except ordinances for codification and revision of ordinances. Upon final passage and approval by the mayor, all ordinances must be signed by the mayor and filed with the City Clerk. ”

**Section 2.** Section 2-27 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

**“Sec. 2-27. Reading by title; emergency ordinances; effective date; .**

Any ordinance, with unanimous consent of all members of the council present, may be read by title only. In the event of an emergency, the city council may waive the second reading of the ordinance. Any ordinance, other than an emergency ordinance or general appropriation ordinance providing for the ordinary and current expenses of the city, passed by the council shall not become effective until 30 days after its final passage and

adoption, or such later effective date as may be set forth in the ordinance. In the case of emergency ordinance, the emergency must be expressed in the preamble or in the body of the ordinance, and the ordinance must receive a two-thirds vote of all members of the council elected. In emergency ordinances the resolution shall include only such measures as are immediately necessary for the preservation of peace, health and safety, and shall not include a franchise or license to a corporation or individual, nor any provisions for the sale of real estate, nor any lease or letting for a period exceeding one year, nor the purchase or sale of personal property exceeding \$5,000.00 in value. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days."

**Section 3.** These amendments shall become effective thirty (30) days after their final passage.

Said ordinance read and put on its passage this 9th day of March, 2010.

\_\_\_\_\_  
Joe Whalen, Mayor

ATTEST:

\_\_\_\_\_  
Kori Pray, City Clerk

**FINALLY PASSED AND ADOPTED** this 23rd day of March, 2010.

\_\_\_\_\_  
Joe Whalen, Mayor

ATTEST:

\_\_\_\_\_  
Kori Pray, City Clerk

**7-5-103. Ordinance requirements.** (1) All ordinances must be submitted in writing in the form prescribed by resolution of the governing body.

(2) An ordinance passed may not contain more than one comprehensive subject, which must be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies must be made available to the public.

(4) After passage and approval, all ordinances must be signed by the presiding officer of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

**7-5-104. Emergency ordinance.** In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

**7-5-4201. Municipal ordinances.** (1) The style of ordinances may be as follows: "Be it ordained by the council of the city of .... (or town of ....)", and all ordinances may be published or posted as prescribed by the council.

(2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor or the person acting in the mayor's stead and must be recorded in a book kept by the clerk, called "The Ordinance Book", and numbered by numerical decimal system in the order in which they are passed or codified.

(3) An ordinance may not be passed containing more than one subject, which must be clearly expressed in its title, except ordinances for the codification and revision of ordinances.

**7-5-4203. Effective date of ordinances and resolutions.** (1) An ordinance passed by the council of any city or town may not become effective until 30 days after its passage except:

- (a) general appropriation ordinances providing for the ordinary and current expenses of the city or town; and
- (b) emergency measures.

(2) A resolution is immediately effective unless a delayed effective date is specified in the resolution.

**7-5-4204. Details relating to emergency measures.** In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances, the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety and shall not include:

- (1) a franchise or license to a corporation or individual;
- (2) any provisions for the sale of real estate;
- (3) any lease or letting of any property for a period exceeding 1 year; or
- (4) the purchase or sale of personal property exceeding \$5,000 in value.

**7-5-4205. Powers of mayor related to ordinances and resolutions.** The mayor has power to:

- (1) cause the ordinances of the city or town to be executed;
- (2) approve all ordinances and resolutions of the council adopted by it;
- (3) veto any objectionable part of a resolution or ordinance and approve the other parts.

## **Allen Kelm**

---

**From:** George Huss  
**Sent:** Wednesday, December 19, 2012 10:02 AM  
**To:** 'Butch Grenz'; "Allen Kelm"  
**Cc:** ericabhpc@midrivers.com; Jana Mueller; Becky Stanton; Billie Burkhalter; Connie Watts; Linda Wildman  
**Subject:** Ahanu Settlement Agreement  
**Attachments:** Resolution 3574 approving settlement with Ahanu, CMG and NAS (rev 12-19-12).pdf; Resolution 3573 approving CMG Change Order No. 6 (Date Changed).pdf

This morning I had a teleconference with Lonni Fleck of Interstate Engineering and her attorney, Dana Hupp. We reviewed the changes that NAS made to the proposed settlement agreement with Ahanu, CMG and NAS. Many of the changes were simple contractual "boilerplate" provisions. The major change was to make Interstate Engineering both a released party and a releasing party. Lonni and Dana were in agreement as to those changes. The original agreement excepted out from the release any claims the City had against Ahanu, CMG and NAS for warranty work. That provision has been moved to a separate paragraph and still reserves the City's warranty claims through the warranty period which expires May 31, 2013, which is one year from the date of substantial completion. The dollar amounts in the agreement have not changed and there is still a \$12,500.00 holdback for pavement seal coating.

Upon review, I approve the provisions of the settlement agreement, subject to approval by the Finance Committee and the Council as a whole.

I have told Lonni to obtain the signatures of Ahanu and CMG to the agreement before it is submitted to the Council for final consideration. That way we will know that everyone else has agreed to the document before the Council takes final action.

The modified settlement agreement is attached to the revised Resolution 3574. It needs to go to the Finance Committee and then must be submitted to the Council by resolution. You already have Resolutions 3573, which approves Change Order No. 6, and Resolution 3574, which approves the settlement agreement. The attached settlement agreement will need to be substituted as Exhibit "A" on Resolution 3574, so I am attaching a Resolution 3574 with the revised Exhibit "A" and a January 8 passage date. I am also attaching a revised Resolution 3573 with a January 8 passage date.

*George W. Huss*

**BROWN AND HUSS, P.C.**

507 Pleasant Street  
P.O. Box 128  
Miles City, Montana 59301  
(406) 234-3054  
(406) 234-5864 (FAX)  
[bhpc@midrivers.com](mailto:bhpc@midrivers.com)

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## RESOLUTION NO. 3573

### A RESOLUTION AUTHORIZING CHANGE ORDER NO. 6 TO CMG CONSTRUCTION, INC. ON THE CONTRACT FOR WATER SYSTEM IMPROVEMENTS FOR PHASE 3 WATER MAIN REPLACEMENT 20" TRANSMISSION MAIN DATED APRIL 12, 2011.

*WHEREAS*, on April 12, 2011, the City of Miles City and Ahanu Construction, Inc. entered into a contract for the construction of certain improvements for the City of Miles City municipal water system commonly referred to as "System Improvements for Phase 3 Water Main Replacement 20" Transmission Main" hereinafter "*the Contract*";

*AND WHEREAS*, by letter dated October 25, 2011, and signed on October 26, 2011 and delivered to the City of Miles City on October 26, 2011, Ahanu Construction, Inc. informed the City of Miles City, that it was irrevocably and voluntarily abandoning the Contract effective upon the City's receipt of such letter;

*AND WHEREAS*, North American Specialties Insurance ("*NAS*") is the surety on the performance bond for Ahanu Construction, Inc. under the Contract;

*AND WHEREAS*, due to Ahanu Construction, Inc.'s default in the performance of the Contract and its voluntary and irrevocable abandonment of the Contract, *NAS* had undertaken the performance and completion of the Contract and has designated CMG Construction, Inc. of Billings, Montana as the independent contractor to perform and complete the Contract on behalf of *NAS*;

*AND WHEREAS*, CMG Construction, Inc., with the concurrence of the project engineers, Interstate Engineering, Inc., has submitted for approval by the City of Miles City City Council Change Order No. 6, a copy of which is attached hereto as Exhibit "A" and made a part hereof;

*AND WHEREAS*, such change order will result in the alteration or modification of the specifications or plans of the Contract and will result in an increase in the contract price in the sum of \$34,075.53 and an increase in the contract time of 12 days;

*AND WHEREAS*, Pursuant to §7-5-4308 MCA, the change order and the change in contract price may be authorized only upon resolution of the City Council;

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

1. Change Order No. 6 to CMG Construction, Inc. upon the Contract, a copy of which is attached hereto as Exhibit "A" and made a part hereof, is hereby approved by this Council;
2. An increase in the Contract price by \$34,075.53 and an increase in the contract time by 12 days for the work performed pursuant to such change order is hereby approved by this Council;

3. The Mayor of the City of Miles City is hereby empowered and authorized to execute Change Order No. 6 on behalf of the City of Miles City and bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING OF THE CITY COUNCIL CONDUCTED THIS 8TH DAY OF JANUARY, 2013.**

---

C.A. Grenz, Mayor

ATTEST:

---

Rebecca Stanton, City Clerk

# Change Order

No. 6

Exhibit "A"

Date of Issuance: October 19, 2012      Effective Date: May 31, 2012

Project: City of Miles City Water System Improvements Phase 3	Owner: City of Miles City	Owner's Contract No.: S10-069
Contract: 20" Transmission Main Schedules I & II		Date of Contract: April 12, 2011
Contractor: NAS Surety Group		Engineer's Project No.: S10-069

**The Contract Documents are modified as follows upon execution of this Change Order:**

Description: Balancing Change order for additional and reduced quantities on the project per the attached Change Worksheet. Additional Springline costs for Bucking Horse Sale delay(\$39,026.61). Deduct for Asphalt repair at Dickinson And Cale and chip seal of Schedules I and II. (-\$12,500)

**Attachments (list documents supporting change):**

Change Order #6 Worksheet

**CHANGE IN CONTRACT PRICE:**

**CHANGE IN CONTRACT TIMES:**

Original Contract Price:  
  
\$434,988.00

Original Contract Times:  Working  Calendar days  
Substantial completion (days or date): 60 days  
Ready for final payment (days or date): 90 days

[Increase] [~~Decrease~~] from previously approved Change Orders No. 1 to No. 5:  
  
\$133,758.28

[Increase] [~~Decrease~~] from previously approved Change Orders No. 1 to No. 5:  
Substantial completion (days): 38  
Ready for final payment (days): 38

Contract Price prior to this Change Order:  
  
\$568,746.28

Contract Times prior to this Change Order:  
Substantial completion (days or date): 98 days  
Ready for final payment (days or date): 128 days

[Increase] [~~Decrease~~] of this Change Order:  
  
\$34,075.53

[Increase] [~~Decrease~~] of this Change Order:  
Substantial completion (days or date): 12  
Ready for final payment (days or date): 12

Contract Price incorporating this Change  
  
\$602,821.81

Contract Times with all approved Change Orders:  
Substantial completion (days or date): 110 days  
Ready for final payment (days or date): 140 days

RECOMMENDED:  
By: \_\_\_\_\_  
Engineer (Authorized Signature)

ACCEPTED:  
By: \_\_\_\_\_  
Owner (Authorized Signature)

ACCEPTED:  
By: \_\_\_\_\_  
Contractor (Authorized Signature)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Funding Agency (if applicable):  
\_\_\_\_\_

Date: \_\_\_\_\_



## RESOLUTION NO. 3574

### A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH AHANU CONSTRUCTION, INC., CMG CONSTRUCTION, INC., AND NORTH AMERICAN SPECIALTIES INSURANCE REGARDING DISPUTES AND CLAIMS ON THE CONTRACT FOR WATER SYSTEM IMPROVEMENTS FOR PHASE 3 WATER MAIN REPLACEMENT 20" TRANSMISSION MAIN DATED APRIL 12, 2011 AND THE CLAIM UPON THE BOND SECURING PERFORMANCE OF SUCH CONTRACT.

*WHEREAS*, on April 12, 2011, the City of Miles City and Ahanu Construction, Inc. ("*Ahanu*") entered into a contract for the construction of certain improvements for the City of Miles City municipal water system commonly referred to as "System Improvements for Phase 3 Water Main Replacement 20" Transmission Main" hereinafter "*the Contract*";

*AND WHEREAS*, by letter dated October 25, 2011, and signed on October 26, 2011 and delivered to the City of Miles City on October 26, 2011, Ahanu Construction, Inc. informed the City of Miles City, that it was irrevocably and voluntarily abandoning the Contract effective upon the City's receipt of such letter;

*AND WHEREAS*, North American Specialties Insurance ("*NAS*") is the surety on the performance bond for Ahanu Construction, Inc. under the Contract;

*AND WHEREAS*, due to Ahanu Construction, Inc.'s default in the performance of the Contract and its voluntary and irrevocable abandonment of the Contract, NAS undertook the performance and completion of the Contract and designated CMG Construction, Inc ("*CMG*"). of Billings, Montana as the independent contractor to perform and complete the Contract on behalf of NAS;

*AND WHEREAS*, Ahanu subsequently requested mediation of its disputes and claims with the City under the Contract, pursuant to the terms of the Contract;

*AND WHEREAS*, CMG has asserted certain claims with the City's project engineer for extra compensation and extra time upon the Contract;

*AND WHEREAS*, the City has asserted certain claims and penalties against Ahanu, CMG, and NAS under the terms of the Contract;

*AND WHEREAS*, Ahanu, CMG, NAS, the City, and the City's project engineer, have engaged in settlement discussions to resolve their mutual claims;

*AND WHEREAS*, Ahanu, CMG, and NAS are agreeable to the resolution of these claims pursuant to the terms of the General Waiver of Claims and Release attached hereto as Exhibit "A", and made a part hereof;

*AND WHEREAS*, the City's project engineer has recommended the City's acceptance of the terms and conditions of the General Waiver of Claims and Release attached hereto as Exhibit

“A”;

*AND WHEREAS*, the City Council of the City of Miles City has determined that acceptance of the terms and conditions of the settlement agreement attached hereto as Exhibit “A” is in the best interests of the City of Miles City and the customers of its water system;

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

1. The General Waiver of Claims and Release among Ahanu, CMG, NAS, and the City of Miles City, a copy of which is attached hereto as Exhibit “A” and made a part hereof, is hereby approved by this Council;
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute such General Waiver of Claims and Release on behalf of the City of Miles City, bind the City of Miles City thereto, and carry out its terms and conditions..

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING OF THE CITY COUNCIL CONDUCTED THIS 8TH DAY OF JANUARY, 2013.**

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C.A. Grenz, Mayor

ATTEST:

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Rebecca Stanton, City Clerk

**GENERAL WAIVER OF CLAIMS AND RELEASE**

**PARTIES:** Ahanu Construction, Inc. (**Ahanu**); North American Specialty Insurance Company (**NAS**); CMG Construction, Inc. (**CMG**); City of Miles City, Montana (**Miles City**) and I.E. Holding Company, Inc. & Subsidiaries (including Interstate Engineering Inc.) (**Interstate**); collectively "the **Parties**" or "the parties".

**DATE OF INCIDENT:** April 2011 to present.

**DESCRIPTION OF INCIDENT:** Phase 3 Water System Improvements 20" Transmission Main, I.E. #S10-069, Miles City, Montana (the **Project**) awarded to **Ahanu** by Notice of Award dated April 12, 2011.

**SUM OF SETTLEMENT:** **Miles City** hereby waives claims for penalties and costs as described below against **Ahanu**, **NAS**, and **CMG**; **Miles City** further agrees to pay the total sum of \$173,714.31, to **Ahanu**, **NAS**, and **CMG**, which the parties agree is the remaining amount **Miles City** owes under the contract between **Miles City** and **Ahanu**, including Change Orders 1 through 6. Proceeds will be disbursed as follows: **Miles City** will issue a check to **Ahanu**, **NAS**, and **CMG**, as joint payees, in the amount of \$161,214.31, and will hold back \$12,500.00 for completion of corrective actions necessary to finalize the **Project**, including, but not limited to, chip sealing along the entire length of the project.

**Ahanu**, **NAS**, and **CMG** hereby waive and release claims against **Miles City** and **Interstate** as described below.

**Interstate** hereby waives and releases claims against **Ahanu**, **NAS** and **CMG** as described below. **Interstate** will pay **Ahanu**, **NAS**, and **CMG** \$10 each, the adequacy of which is hereby acknowledged as consideration for **Ahanu**, **NAS**, and **CMG**'s release of **Interstate** as described herein.

**1. Waiver and Release – Ahanu, NAS, and CMG**

**Ahanu**, **NAS**, and **CMG** acknowledge receipt of the above sum of money and in consideration for payment of such sum, and in consideration of **Miles City**'s and **Interstate**'s waiver and release set forth below, for themselves, and their heirs, personal representatives, successors, assigns, agents, partners, officers, directors, parent corporations, subsidiaries, affiliates, and employees fully and forever release and discharge **Miles City** and **Interstate**, their respective heirs, personal representatives, successors, assigns, agents, partners, officers, directors, subsidiaries, affiliates, employees and attorneys from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, of whatever kind, nature and/or

description, whether legal or equitable, and the consequences thereof, including any claims, losses, costs or damages, whether known or unknown, liquidated or unliquidated, fixed or contingent, direct or indirect arising out of the described incident/**Project**, including all claims which could have been asserted by **Ahanu, NAS, and CMG** against **Miles City and Interstate**.

## 2. Waiver and Release - **Miles City and Interstate**

**Miles City and Interstate** in consideration of the mutual covenants contained herein, for themselves, and their heirs, personal representatives, successors, assigns, agents, partners, officers, directors, parent corporations, subsidiaries, affiliates, and employees fully and forever release and discharge **Ahanu, NAS, and CMG**, their respective heirs, personal representatives, successors, assigns, agents, partners, officers, directors, subsidiaries, affiliates, employees and attorneys from any and all actions, claims, causes of action, demands, or expenses for damages or injuries including penalty damages and Miles City's out of pocket costs, including engineering and attorneys fees, and direct expenses of Miles City's work crews, whether asserted or unasserted, known or unknown, foreseen or unforeseen of whatever kind, nature and/or description, whether legal or equitable, and the consequences thereof, including any claims, losses, costs or damages, whether known or unknown, liquidated or unliquidated, fixed or contingent, direct or indirect arising out of the described incident/**Project**, including all claims which could have been asserted by **Miles City and Interstate** against **Ahanu, NAS and CMG**. **Miles City and Interstate** agree that the release language of this paragraph specifically includes any and all claims arising out of the investigation, handling, adjusting, defense or settlement of the claims including, without limitation, any claims for breach of contract, in tort, violation of the covenant of good faith and fair dealing, violation of Montana Code Annotated §§ 33-18-201 et seq., and in common-law bad faith which could otherwise be made against **NAS's** bonds on the **Project**, including any claims which could otherwise be asserted against **Ahanu and CMG**, either individually or in their capacity as Indemnitors, except as provided in paragraph 4.

## 3. Future Damages

Inasmuch as the injuries, damages, and losses resulting from the events described herein may not be fully known and may be more numerous or more serious than it is now understood or expected, **Ahanu, NAS, CMG, Miles City and Interstate** agree, as a further consideration of this agreement, that their Release applies to any and all injuries, damages and losses resulting from the incident described herein/**Project**, even though now unanticipated, unexpected and unknown, as well as any and all injuries, damages and losses which have already developed and which are now known or anticipated.

## 4. Project Warranty

Notwithstanding any other provision of this Agreement, **Ahanu, NAS and CMG** shall remain responsible to **Miles City** for all actual expenses and costs incurred to perform any additional work under the **Project** warranty which arises from **Ahanu's** and **CMG's** work. The **Project** warranty expires on May 31, 2013, at which time the obligations outlined in this paragraph shall also expire.

5. **Release of Insurers**

**Ahanu, NAS, and CMG** further release 1) the Montana Municipal Interlocal Authority (MMIA), a risk retention pool, its members, and all of its excess coverage insurers and reinsurers; and 2) Evanston Insurance Company, insurer for **Interstate**, including any and all of its associated or affiliated companies, and all employees and agents of any of them, from all obligations under any part of the insurance policies applicable to **Ahanu, NAS, and CMG's** claims and from any and all claims arising out of the investigation, handling, adjusting, defense or settlement of the claims including, without limitation, any claims for breach of contract, in tort, violation of the covenant of good faith and fair dealing, violation of Montana Code Annotated §§ 33-18-201 et seq., and in common-law bad faith.

6. **No Admission of Liability**

It is understood that the above-mentioned consideration and waiver of claims are accepted as the sole consideration for full satisfaction and accord to compromise a disputed claim, and that neither the payment of sums or other provisions, nor the negotiations for settlement shall be considered as an admission of liability.

7. **No Additional Claims**

**Ahanu, NAS, CMG, Miles City and Interstate** represent that no additional claims are contemplated against any other party potentially liable for the losses, damages, and injuries for which this Release is given. In the event any additional claim is made which directly or indirectly results in additional liability exposure to any other party for the losses, injuries, and damages for which this Release is given; **Ahanu, NAS, CMG, Miles City and Interstate** covenant and agree to indemnify and save the other releasees harmless from all such claims and demands, including reasonable attorneys' fees and all other expenses necessarily incurred.

8. **Disclaimer**

The parties have carefully read the foregoing, discussed its legal effect with their attorneys, understand the contents thereof, and signs the same of their own free will and accord. To the extent any documents are required to be executed by any of the parties to effectuate this Agreement, each party agrees to execute and deliver such documents as may be required to carry out the terms of this Agreement.

9. **Severability**

Should any provision of this Agreement be determined to be unenforceable, all remaining terms and clauses shall remain in force and shall be fully severable.

10. **Choice of Law**

The laws of the State of Montana shall apply to the interpretation of this Agreement.

**11. Final Agreement; Contingent Upon City Council Approval**

This written Agreement constitutes the final and entire agreement between the parties and shall fully extinguish and supersede any and all prior oral agreements, understandings, or contracts, implied and expressed, to the contrary. This agreement is contingent upon its approval by the City Council of the City of Miles City by appropriate resolution.

**12. Complete Defense**

This Agreement may be plead by the parties as a full and complete defense to any action, suit or other proceeding which may be instituted, prosecuted or attempted by any other party pertaining to the Project.

**13. Fees and Costs**

Each party agrees to bear their own costs and attorneys' fees.

**14. Warranty of Capacity to Execute Agreement**

By their signatures below, each respective signatory represents that he or she has the express authority of the party for which he or she executes this Agreement and further has the express authority to bind his or her principal to the terms hereof. The parties represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations or causes of action referred to in this Agreement and that he, she or it has the sole right and exclusive authority to execute this document and receive the sum specified in it.

**15. No Inducement**

Each party declares and represents that no promise, inducement, or other agreement not expressly contained herein has been made and that this Agreement contains the entire agreement of the parties. The terms of this Agreement are contractual and not recitals only.

**16. Amendment**

This Agreement shall not be altered, amended, or modified in any respect except by a writing duly executed by all parties hereto.

**17. Numbers and Headings**

Paragraph numbers and headings are used herein for convenience only and shall have no force and effect in the interpretation or construction of this Agreement. As used in this Agreement, the singular shall include the plural; and the masculine, the feminine and neuter genders.

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**18. No Waiver**

No waiver of any breach of any one or more of the conditions or covenants of this Agreement by any party shall be deemed to imply or constitute a waiver of a breach of any other condition or covenant in this Agreement or of a breach of the same condition or covenant in the future.

**19. Joint Authorship**

This Agreement is the product of the negotiations of the parties. By virtue of the signature of all parties hereinbelow, this Agreement shall be deemed to have been drafted by all parties jointly, and any ambiguity herein shall not be construed for or against any party.

**20. Counterpart Signatures**

This Agreement may be executed in counterparts and shall be effective immediately upon exchange of counterpart signatures by facsimile or otherwise.

**21. No Third-Party Beneficiary**

Each of the provisions of this Agreement is for the sole and exclusive benefit of the parties and none of the provisions is intended to benefit any third party; provided however, that the release provisions of paragraph 5, above, shall extend to the persons and entities described therein.

**22. Assignment**

This Agreement and the rights and obligations hereunder shall not be assigned without the prior written consent of all the parties and such consent may be withheld at the sole discretion of each party. Except as so restricted, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**23. General Indemnity Agreement**

Notwithstanding any other provision of this Agreement, **Ahanu, CMG, and NAS** all agree that the release provisions of this Agreement do not include or in any way modify or limit the General Indemnity Agreement ("GIA"), attached hereto as Exhibit "A". It is agreed by **Ahanu, CMG and NAS** that, to the extent legally enforceable, the GIA shall remain in full force and effect after the complete execution of this Agreement and shall not merge into or otherwise become included within or limited by this Agreement. **Ahanu and CMG** acknowledge and agree that **NAS** has reserved all rights, remedies and defenses available to it pursuant to the GIA and applicable law governing the same. Likewise, **NAS** acknowledges and agrees that **Ahanu** has reserved all rights, remedies and defenses available to it pursuant to the GIA and applicable law governing the same.

**CAUTION: READ BEFORE SIGNING!**

DATED this 7<sup>th</sup> day of December, 2012.

Ahanu Construction, Inc.

By: [Signature]  
Its PRESIDENT  
RELEASOR

DATED this 7<sup>th</sup> day of December, 2012.

North American Specialty Insurance Company

By: [Signature] DAVID LEWIS  
Its VIC President  
RELEASOR

DATED this 7<sup>th</sup> day of December, 2012.

CMG Construction, Inc.

By: [Signature]  
Its Sec. Treas  
RELEASOR

DATED this 7<sup>th</sup> day of December, 2012.

City of Miles City, Montana

By: \_\_\_\_\_  
Its \_\_\_\_\_ (office)  
RELEASOR

DATED this 7<sup>th</sup> day of December, 2012.

I.E. Holding Company, Inc.

By: [Signature]  
Its Treasurer (office)  
RELEASOR



STATE OF MONTANA )

: SS  
County of Yellowstone

This instrument was acknowledged before me on the 21 day of December, 2012, by  
Releasor (Ahanu)



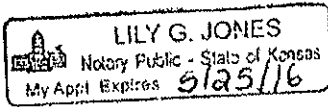
Susan McAllister-Emter  
SUSAN McALLISTER-EMTER  
NOTARY PUBLIC for the State of Montana  
Residing at Billings, Montana  
My Commission Expires  
January 16, 2013

Susan McAllister-Emter  
SUSAN McALLISTER-EMTER (printed name)  
Notary Public, State of Montana  
Residing at: Billings MT  
My commission expires: January 16 2013

STATE OF KANSAS )

: SS  
County of Johnson

This instrument was acknowledged before me on the 7<sup>th</sup> day of December, 2012, by  
Releasor (NAS).



David Lewis  
David Lewis (printed name)  
Notary Public, State of Kansas  
Residing at: Overland Park, Kansas  
My commission expires: 5/25/16

STATE OF MONTANA )

: SS  
County of Yellowstone

This instrument was acknowledged before me on the 21 day of December, 2012, by  
Releasor (EMG)



Susan McAllister-Emter  
SUSAN McALLISTER-EMTER  
NOTARY PUBLIC for the State of Montana  
Residing at Billings, Montana  
My Commission Expires  
January 16, 2013

Susan McAllister-Emter  
SUSAN McALLISTER-EMTER (printed name)  
Notary Public, State of Montana  
Residing at: Billings MT  
My commission expires: January 16 2013

STATE OF MONTANA )  
: ss  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of December, 2012, by  
Releasor (Miles City).

\_\_\_\_\_  
(printed name)  
Notary Public, State of Montana  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

*North Dakota*  
STATE OF MONTANA )  
: ss  
County of *Williams* )

This instrument was acknowledged before me on the 31 day of December, 2012, by  
Releasor (Interstate).

MICHELLE HAUGEN  
Notary Public  
State of North Dakota  
My Commission Expires April 16, 2018

*Michelle Haugen*  
\_\_\_\_\_  
*Michelle Haugen* (printed name)  
Notary Public, State of Montana *North Dakota*  
Residing at: *Williams County*  
My commission expires: *April 16, 2018*

APPROVED BY:

Attorney for Ahanu Construction, Inc.

N/A  
Attorney Name

Attorney for North American Specialty Insurance Company

*David Lewis*  
\_\_\_\_\_  
Attorney Name *DAVID LEWIS*  
*VP - NAS Surety*

Attorney for CMG Construction, Inc.

\_\_\_\_\_  
Attorney Name

Attorney for City of Miles City, Montana

\_\_\_\_\_  
Attorney Name

Attorney for I.E. Holding Company, Inc.

\_\_\_\_\_  
Attorney Name  
//



01/04/13  
10:15:57

CITY OF MILES CITY  
Claim Approval List  
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\* ... Over spent expenditure

Claim	Vendor #/Name/	Document \$/	Disc \$						Cash
Check	Invoice #/Inv Date/Description	Line \$		PO #	Fund Org Acct	Object Proj	Account		
122007	498 CENTURY LINK	18,043.38							
	122007 12/31/12 ANNUAL SERVICES CONTRACT	14,091.98		15260	2850 105 420140	350	101000		
12053131									
	122007 12/31/12 911 PHONE SYSTEM	1,965.87		15257	2850 105 420140	345	101000		
A/C#406896217									
	122007 12/31/12 911 PHONE SYSTEM	1,985.53			2850 105 420140	345	101000		
122011	4008 PITNEY BOWES	267.12							
	122011 12/31/12 METER RENTAL	89.04*			1000 3 410500	311	101000		
2167726									
	122011 12/31/12 METER RENTAL	89.04			5210 25 430510	311	101000		
2167726									
	122011 12/31/12 METER RENTAL	89.04			5310 29 430610	311	101000		
2167726									
122012	1737 MC AREA SOLID WASTE DISTRICT	612.95							
	122012 12/31/12 QUARTERLY CHARGES	47.41*			5510 10 420730	346	101000		
3536A									
	122012 12/31/12 QUARTERLY CHARGES	47.42			1000 7 420460	346	101000		
	122012 12/31/12 QUARTERLY CHARGES	47.41			1000 8 411230	346	101000		
	122012 12/31/12 QUARTERLY CHARGES	237.06			1000 13 460433	346	101000		
	122012 12/31/12 QUARTERLY CHARGES	71.12			5210 22 430530	346	101000		
	122012 12/31/12 QUARTERLY CHARGES	47.41			5310 33 430640	346	101000		
	122012 12/31/12 QUARTERLY CHARGES	71.12			6040 910 430220	346	101000		
	122012 12/31/12 ANIMAL DISPOSAL	25.00		15762	1000 21 440600	220	101000		
3507A									
	122012 12/31/12 DEMO WASTE	19.00		15870	1000 13 460433	220	101000		
127800									
122013	999999 KATHY DOEDEN	350.00							
	122013 12/31/12 EPA BRNFELD GRNT: GRNT WRITING	350.00*			2935 11 460461	360	101000		
122014	999999 NENA	130.00							
	122014 12/31/12 NENA MBRSHIP: ROOS	130.00		15259	2850 105 420140	334	101000		
300008013									
122015	999999 BARBARA HAMBURG	4.57							
	122015 12/31/12 AMBULANCE OVERPAYMENT	4.57		15259	5510 122000		101000		

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Claim	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
122016		1407 KADRMAS LEE & JACKSON INC		6,863.29					
	122016	12/31/12 GIS DATA MAINT		1,275.00		15258	2850 105 420140	350	101000
161296		122016 12/31/12 OLD RIVERSIDT TANK DEMO		4,610.79			5210 23 430550	959	101000
	122016	12/31/12 GIS		977.50			2850 105 420140	350	101000
122017		1649 MCC CENTRA ATHLETIC CENTER		1,700.00					
	122017	12/31/12 PD 2013 MEMBERSHIP		1,700.00		15760	1000 5 420140	334	101000
167									
122018		237 CPI COLLECTION PROFESSIONALS INC		61.52					
	122018	12/31/12 WATER/SEWER COLLECTIONS		1.25			5210 25 430510	350	101000
	122018	12/31/12 WATER/SEWER COLLECTIONS		1.25			5310 29 430610	350	101000
	122018	12/31/12 AMBULANCE COLLECTIONS		59.02			5510 10 420730	350	101000
122019		1937 MONTANA AERONAUTICS DIVISION		849.39					
	122019	12/31/12 WINDSOCK RUNWAY BULBS		849.39		15491	5610 87 430300	230	101000
2707									
122020		1424 KRUTZFELDT & JONES LLP		43.75					
	122020	12/31/12 GENERAL COUNSEL		43.75		15492	5610 87 430300	350	101000
13707									
122021		291 ECOLAB PEST ELIMINATION DIVISION		56.60					
	122021	12/31/12 PEST CONTROL		56.60		15493	5610 87 430300	230	101000
8628941									
122022		810 DORSEY & WHITNEY, LLP		12,000.00					
	122022	12/31/12 SEWER SYSTEM REVENUE BONDS		5,280.00			5310 32 430690	940	102240
1843101									
	122022	12/31/12 SEWER SYSTEM REVENUE BONDS		6,720.00			5310 33 430640	940	102240
1843101									
122023		316 DATA IMAGING SYSTEMS, INC		985.00					
	122023	12/31/12 MANAGED SERVICES;DATA BKP		295.47			1000 3 410500	360	101000
24201									
	122023	12/31/12 MANAGED SERVICES;DATA BKP		110.82*			5210 25 430510	360	101000
	122023	12/31/12 MANAGED SERVICES;DATA BKP		110.82*			5310 29 430610	360	101000
	122023	12/31/12 MANAGED SERVICES;DATA BKP		65.67			1000 1 410200	360	101000
	122023	12/31/12 MANAGED SERVICES;DATA BKP		153.01			1000 36 411020	360	101000
	122023	12/31/12 MANAGED SERVICES;DATA BKP		44.00			5210 23 430550	360	101000

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Claim	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
	122023	12/31/12	MANAGED SERVICES;DATA BKP	43.34			5310 31 430630	360	101000
	122023	12/31/12	MANAGED SERVICES;DATA BKP	63.04			2510 107 430220	360	101000
	122023	12/31/12	MANAGED SERVICES;DATA BKP	24.95			2520 108 430220	360	101000
	122023	12/31/12	MANAGED SERVICES;DATA BKP	73.88			1000 9 410540	360	101000
122026			999999 SAFEGUARD BUSINESS SYSTEMS	134.36					
	122026	12/31/12	W2/1099 FORMS	44.79*			1000 3 410500	210	101000
	028418970								
	122026	12/31/12	W2/1099 FORMS	44.79			5210 25 430510	210	101000
	028418970								
	122026	12/31/12	W2/1099 FORMS	44.78			5310 29 430610	210	101000
122027			2151 MORRISON & MAIERLE INC	540.00					
	122027	12/31/12	MANAGED SERVICES	540.00			2850 105 420140	350	101000
	14497								
122029			295 AMERI PRIDE	27.08					
			]						
		12/31/12	REPAIR & MAIN SREV	14.00			5610 87 430300	230	101000
	2900173031								
		12/31/12	REPAIR & MAIN SREV	13.08			5610 87 430300	230	101000
	29001613709								
122030			268 MILES CITY SANITATION INC.	163.00					
	122030	12/31/12	GARBAGE SERVICES	43.00			1000 5 420140	346	101000
	122030	12/31/12	GARBAGE SERVICES	40.00			5610 87 430300	230	101000
	2A100414								
	122030	12/31/12	GARBAGE SERVICES	40.00			5610 87 430300	230	101000
	2C101032								
	122030	12/31/12	GARBAGE SERVICES	40.00			5610 87 430300	230	101000
	2B100719								
122031			1120 GLADER ELECTRIC CO	163.59					
	122031	12/31/12	R & M ELECTRICAL SUPPLIES	163.59		69459,	5310 32 430690	230	101000
	69461								
122032			999999 JASON BEDNAR	267.00					
	122032	12/31/12	REIMB FOR 2 TRIPS:POL ACDMY	267.00		15769	1000 5 420140	370	101000

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Claim	Vendor #/Name/	Document \$/	Disc \$						Cash
Check	Invoice #/Inv Date/Description	Line \$		PO #	Fund Org Acct	Object Proj	Account		
122033	1047 MARILYNN FORMAN	350.00							
122033	12/31/12 PD CLEANING: DEC 2012	350.00		15769	1000 5 420140	350		101000	
122034	975 FIREMANS FUND	113.50							
122034	12/31/12 PART-PD CLOTHING/REPAIR FEES	113.50*		16219	1000 7 420460	226		101000	
122035	4011 BIG SKY LINEN	577.78							
122035	12/31/12 FLOOR MATS	16.06		15767	1000 5 420140	360		101000	
0072182									
122035	12/31/12 TOWELS/MATS	20.32		15379	5310 33 430640	360		101000	
0068356									
122035	12/31/12 FLOOR MATS	487.60		15550	2220 16 460100	360		101000	
CONTRACT									
122035	12/31/12 FLOOR MATS	33.18			1000 8 411230	220		101000	
122035	12/31/12 FLOOR MATS	20.62			6040 910 430220	220		101000	
122036	979 FIREMANS COMPANY	295.50							
122036	12/31/12 FIRE EXT SERVICE:ANNUAL	200.00		16215	1000 7 420460	230		101000	
2938									
122036	12/31/12 FIRE EXT SERVICE:ANNUAL	69.00		16215	5510 10 420730	230		101000	
2939									
15765	12/31/12 RECHARGE; CHEMICAL	19.00		15765	1000 5 420140	220		101000	
2939									
122036	12/31/12 ANNUAL SERVICE	7.50			2510 107 430220	360		101000	
122037	999999 MID-AMERICA RESEARCH CHEMICAL	117.93							
122037	12/31/12 BREAKAWAY PENATRATING OIL	35.38		15386	5210 22 430530	230		101000	
0485363									
122037	12/31/12 BREAKAWAY PENATRATING OIL	35.38		15386	5210 80 430540	230		101000	
122037	12/31/12 BREAKAWAY PENATRATING OIL	28.30		15386	5310 33 430640	230		101000	
122037	12/31/12 BREAKAWAY PENATRATING OIL	18.87		15386	5310 32 430690	230		101000	
122038	408 BRENNTAG PACIFIC, INC.	459.90							
122038	12/31/12 CALCIUM HYPOCHL TABLETS	459.90		15385	5210 80 430540	222		101000	
BPI258475									
122039	501 CHEM SEARCH	408.60							
122039	12/31/12 LUBRA-GUARD	204.30		15384	5210 22 430530	230		101000	
943515									
122039	12/31/12 LUBRA-GUARD	204.30		15384	5210 80 430540	230		101000	







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CITY OF MILES CITY  
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\* ... Over spent expenditure

Claim	Vendor #/Name/ Check Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
122057	378 BLACK MOUNTAIN SOFTWARE	100.00					
	12257 12/31/12 MP50-CASS CERTIFICATION	50.00			5210 25 430510	350	101000
	12257 12/31/12 MP50-CASS CERTIFICATION	50.00			5310 29 430610	350	101000
122059	2305 NOTBOHM MOTORS	386.70					
	122059 12/31/12 HEADLAMP SWITCH	386.70		16221	5510 10 420730	230	101000
72502							
122060	4010 FELT, MARTIN, FRAZIER & WELDON,	393.75					
	122060 12/31/12 LEGAL SERVICES	393.75			1000 3 411101	350	101000
122061	1142 GUMDROP BOOKS-CENTRAL PROGRAMS	249.62					
	122061 12/31/12 CHILDREN'S BOOKS	249.62		15549	2220 16 460100	382	101000
	PINV59146						
122062	2830 STAR PRINTING & SUPPLY	1,302.68					
	122062 12/31/12 OFFICE SUPPLIES	52.31*			1000 3 410500	210	101000
	187790,, 187792, 188258						
	122062 12/31/12 OFFICE SUPPLIES	52.31			5210 25 430510	210	101000
	122062 12/31/12 OFFICE SUPPLIES	52.30			5310 29 430610	210	101000
	122062 12/31/12 OFFICE SUPPLIES	44.77*			1000 4 411100	210	101000
188503							
	122062 12/31/12 CHILDREN'S BOOKS	49.23		15547	2220 16 460100	320	101000
188478							
	122062 12/31/12 SERVICE CONTRACT-COPY MACH	63.02		16036	1000 6 410300	533	101000
188407							
	122062 12/31/12 OFFICE SUPPLIES	121.98			1000 6 410300	210	101000
	122062 12/31/12 SERVICE CONTRACT-COPY MACH	87.06		16216	5510 10 420730	210	101000
190052							
	122062 12/31/12 SERVICE CONTRACT-COPY MACH	60.87		15192	5510 10 420730	220	101000
188476							
	122062 12/31/12 COPIER REPAIR	75.00			2985 15 450330	220	101004
189038							
	122062 12/31/12 PRINTING	133.58			1000 3 410500	320	101000
	122062 12/31/12 PRINTING	133.58			5210 25 430510	320	101000
	122062 12/31/12 PRINTING	133.58			5310 29 430610	320	101000
	122062 12/31/12 OFFICE SUPPLIES	62.27*			1000 3 410500	210	101000
	122062 12/31/12 OFFICE SUPPLIES	62.27			5210 25 430510	210	101000
	122062 12/31/12 OFFICE SUPPLIES	62.26			5310 29 430610	210	101000
	122062 12/31/12 PRINTING	56.29			5310 31 430630	320	101000

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\* ... Over spent expenditure

Claim	Vendor #/Name/	Document \$/	Disc \$					Cash
Check	Invoice #/Inv Date/Description	Line \$		PO #	Fund Org Acct	Object Proj	Account	
122063	2831 MILES CITY STAR ADVERTISING	587.42						
	122063 12/31/12 LEGAL ADVERTISING	47.17			1000 3 410500	330	101000	
90191, 90680								
	122063 12/31/12 LEGAL ADVERTISING	47.17			5210 25 430510	330	101000	
	122063 12/31/12 LEGAL ADVERTISING	47.16			5310 29 430610	330	101000	
	122063 12/31/12 LEGAL ADVERTISING	16.50			2394 18 420531	330	101000	
86107, 85251, 85774, 866185, 89441								
	122063 12/31/12 PRINTING	132.00*			1000 201 431200	331	101000	
	122063 12/31/12 HELP WANTED PT-TIME	165.42			1000 7 420460	330	101000	
89438, 89511, 89640, 89698, 89805, 89977, 90059, 90177								
	122063 12/31/12 LEGAL AD	22.00			1000 36 411020	331	101000	
	122063 12/31/12 LEGAL AD	88.00			2510 107 430220	330	101000	
	122063 12/31/12 LEGAL AD	22.00			2520 108 430220	330	101000	
122064	394 BOSS INC	1,246.48						
	122064 12/31/12 CONTRACTED SERVICES	295.00			1000 5 420160	350	101000	
	122064 12/31/12 OFFICE SUPPLIES	59.00			1000 5 420160	210	101000	
	122064 12/31/12 OFFICE SUPPLIES	204.70			1000 6 410300	210	101000	
	122064 12/31/12 OFFICE SUPPLIES	375.90			5510 10 420730	214	101000	
	122064 12/31/12 OFFICE SUPPLIES	311.88			1000 6 410300	210	101000	
122065	925 FARMERS ELEVATOR	176.00						
	122065 12/31/12 GREASE	70.40			2510 107 430220	231	101000	
	122065 12/31/12 GREASE	17.60			2520 108 430220	231	101000	
	122065 12/31/12 GREASE	44.00			5210 23 430550	231	101000	
	122065 12/31/12 GREASE	44.00			5310 31 430630	231	101000	
122067	1654 MCRAE OVERHEAD DOOR CO	235.00						
	122067 12/31/12 REPAIR DOOR	94.00			2510 107 430220	350	101000	
	122067 12/31/12 REPAIR DOOR	23.50			2520 108 430220	350	101000	
	122067 12/31/12 REPAIR DOOR	58.75			5210 23 430550	350	101000	
	122067 12/31/12 REPAIR DOOR	58.75			5310 31 430630	350	101000	
122069	2270 NORTHWEST PIPE INC	99.20						
	122069 12/31/12 FILTERS	99.20			5210 23 430550	220	101000	
122070	999999 BRFANDON KELM	960.80						
	122070 12/31/12 REIMBURSEMENT-WTR LINE CURB ST	960.80			5210 23 430550	360	101000	

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\* ... Over spent expenditure

Claim	Vendor #/Name/ Check Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
122071	716 DANA KEPNER CO	5,241.00					
	122071 12/31/12 METERS	5,241.00			5210 23 430550	230	101000
122072	2740 SHERWIN WILLIAMS	33.50					
	122072 12/31/12 PAINT	33.50			5210 23 430550	230	101000
122073	2560 REGAN PLUMBING & HEATING	688.84					
	122073 12/31/12 CONTRACTED REPAIR & SERV	688.84			5210 23 430550	360	101000
122074	2579 ROBERT PECCIA & ASSO	110,337.51					
	122074 12/31/12 WASTEWATER PROJ PHASE 1	60,670.29			5310 32 430690	940	102280
	122074 12/31/12 WASTEWATER PROJ PHASE 1	47,669.52			5310 33 430640	940	102280
	122074 12/31/12 WASTEWATER PROJ PHASE 1	1,997.70			5310 33 430640	357	101000
122075	999999 AMERICAN LEAK DETECTION	1,230.00					
	122075 12/31/12 SOUTHGATE	1,230.00			5210 23 430550	350	101000
122076	639 CUSTER CO HEALTH DEPT	163.00					
	122076 12/31/12 SHOTS	130.40			2510 107 430220	350	101000
	122076 12/31/12 SHOTS	32.60			2520 108 430220	350	101000
122077	1379 JP COOKE CO	67.29					
	122077 12/31/12 DOG LICENSES	67.29			1000 21 440600	220	101000
122078	999999 CENEX HARVEST STATES	300.00					
	122078 12/31/12 SEED FOR DIKE	240.00			2510 107 430220	230	101000
	122078 12/31/12 SEED FOR DIKE	60.00			2520 108 430220	230	101000
122079	499 CHECKERS INC	127.00					
	122079 12/31/12 RANDOM DRUG TESTING	88.50			1000 13 460433	350	101000
	122079 12/31/12 RANDOM DRUG TESTING	30.80			2510 107 430220	350	101000
	122079 12/31/12 RANDOM DRUG TESTING	7.70			2520 108 430220	350	101000
122080	3039 UTILITIES UNDERGROUND LOCATION	80.55					
	122080 12/31/12 LOCATES	40.28			5210 23 430550	360	101000
	122080 12/31/12 LOCATES	40.27			5310 31 430630	360	101000
122081	2529 RAILROAD MAINAGEMENT CO III, LLC	530.45					
	122081 12/31/12 WATER PILE LINE LEASE	530.45			5210 23 430550	532	101000

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CITY OF MILES CITY  
Claim Approval List  
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\* ... Over spent expenditure

Claim	Vendor #/Name/ Check Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
122082	1286 DENNIS HIRSCH	598.20					
	122082 12/31/12 BLDG PERMITS FEES	598.20			2394 18 420531	350	101000
122083	2914 TOURISM BUSINESS IMPROVEMENT	3,402.00					
	122083 12/31/12 DECEMBER TBID REV	3,402.00			7370 212500		101000
122084	999999 SCOTT GRAY	82.65					
	122084 12/31/12 CELL PHONE REIMB	66.12			2510 107 430220	345	101000
	122084 12/31/12 CELL PHONE REIMB	16.53			2520 108 430220	345	101000
122085	999999 TINA RIGGS SCHMIDT	218.78					
	122085 12/31/12 TRAVEL-GREATFALLS	175.02			2510 107 430220	370	101000
	122085 12/31/12 TRAVEL-GREATFALLS	43.76			2520 108 430220	370	101000
122086	999999 JIM GARZA	218.78					
	122086 12/31/12 TRAVEL-GREATFALLS	175.02			2510 107 430220	370	101000
	122086 12/31/12 TRAVEL-GREATFALLS	43.76			2520 108 430220	370	101000
122087	395 VA MONTANA HEALTHCARE SYSTEM	505.02					
	122087 12/31/12 OFFICE LEASE	505.02			2985 15 450300	530	101000
	<b>Total:</b>	<b>199,895.86</b>					
		199,895.86					

CITY OF MILES CITY  
Fund Summary for Claims  
For the Accounting Period: 12/12

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Fund/Account	Amount
1000 GENERAL	
101000 Cash - Operating	\$8,423.33
2220 LIBRARY	
101000 Cash - Operating	\$1,331.45
2270 Health	
101000 Cash - Operating	\$2,666.66
2394 BUILDING CODE ENFORCEMENT	
101000 Cash - Operating	\$614.70
2450 LTG M D#195--(SG-Trico)	
101000 Cash - Operating	\$401.84
2510 STR MAINT DIST #204	
101000 Cash - Operating	\$1,140.30
2520 STR MAINT DIST #205	
101000 Cash - Operating	\$292.40
2850 911 EMERGENCY	
101000 Cash - Operating	\$21,009.00
2935 Historic Preservation	
101000 Cash - Operating	\$350.00
2985 RETIRED SENIOR VOLUNTEER PROG (RSVP)	
101000 Cash - Operating	\$505.02
101004 RSVP Non-Federal Cash Operating	\$75.00
5210 WATER UTILITY	
101000 Cash - Operating	\$17,697.54
5310 SEWER UTILITY	
101000 Cash - Operating	\$3,574.01
102240 Cash - Replacement & Depreciation	\$12,000.00
102280 WWtr Treatment Plant-Phase I	\$108,339.81
5510 AMBULANCE FUND	
101000 Cash - Operating	\$2,098.67
5610 AIRPORT OPERATING	
101000 Cash - Operating	\$1,096.82
6040 PUBLIC WORKS	
101000 Cash - Operating	\$91.74
7370 TBID	
101000 Cash - Operating	\$3,402.00
7467 Law Enforcement Academy Surcharge	
101000 Cash - Operating	\$1,413.00
7471 CIVIL LEGAL ASSIST/VICTIM DOM VIOLENCE	
101000 Cash - Operating	\$2,453.00
7980 CUSTER CO WATER & SEWER DISTRICT	
101000 Cash - Operating	\$10,919.57
<b>Total:</b>	<b>\$199,895.86</b>

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CITY OF MILES CITY  
Claim Approval Signature Page  
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I HAVE CAREFULLY EXAMINED THE ABOVE CLAIM APPROVAL LIST  
AND REFER THE SAME TO THE CITY COUNCIL.

FILED: \_\_\_\_\_

ALLOWED AMOUNT \$ \_\_\_\_\_

DISALLOWED AMOUNT \$ \_\_\_\_\_

APPROVED BY FINANCE COMMITTEE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I HEREBY CERTIFY THAT THE ABOVE IS CORRECT \_\_\_\_\_

CITY CLERK



ORDINANCE NO. 1250

AN ORDINANCE REVISING SECTIONS 16-43 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA SO AS TO PROHIBIT THE DISCHARGE OF FIREARMS ON CITY OWNED OR LEASED LANDS WITHIN THREE (3) MILES OF THE CITY LIMITS EXCEPT AT APPROVED SHOOTING RANGES.

*The City Council of the City of Miles City having determined that the discharge of handguns, rifles and shotguns on City owned or City leased lands within three (3) miles beyond the City limits of the City of Miles City, other than at approved shooting ranges, is disruptive to the peace and safety of the users of such lands;*

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

**Section 1.** Section 16-43 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

**“Sec. 16-43. - Discharge of firearms.**

(a) It shall be unlawful for any person to willfully shoot or fire off a gun, pistol or any other firearm within the limits of the city.

(b) *It shall be unlawful for any person to willfully discharge a handgun, rifle or shotgun upon any City owned or City leased property within three (3) miles beyond the City limits of the City of Miles City, including, but not limited to, Spotted Eagle Recreation Area, Frank Wiley Field, the City Wastewater Treatment plant and adjoining former lagoon area, the City Water Treatment Plant property and Pumping Plant Park, and the Industrial Site west of the City limits. This prohibition shall not apply to authorized users of the Miles City Police Department pistol range adjacent to the City Water Treatment Plant, nor to shotgun users of the trap shooting range at Spotted Eagle Recreation area during daylight hours.*

(bc) Any person who violates this section shall be punishable by a fine not exceeding \$500.00 or by imprisonment in the county jail for a period not exceeding 6 months, or both.

(ed) Firearms may be discharged in an indoor or outdoor rifle, pistol, or shotgun shooting range located within the city limits if the shooting range is approved by the City Council.

(de) Subsections (a and b) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1, MCA.”

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

Said Ordinance read and put on its passage this 8th day of January, 2013.

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

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

**FINALLY PASSED AND ADOPTED** this 22nd day of January, 2013.

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

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

**ORDINANCE NO. 1250**

**AN ORDINANCE REVISING SECTIONS 16-43 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY, MONTANA SO AS TO PROHIBIT THE DISCHARGE OF FIREARMS ON CITY OWNED OR LEASED LANDS WITHIN THREE (3) MILES OF THE CITY LIMITS EXCEPT AT APPROVED SHOOTING RANGES.**

The City Council of the City of Miles City having determined that the discharge of handguns, rifles and shotguns on City owned or City leased lands within three (3) miles beyond the City limits of the City of Miles City, other than at approved shooting ranges, is disruptive to the peace and safety of the users of such lands;

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

**Section 1.** Section 16-43 of the Code of Ordinances of the City of Miles City, Montana is amended to read as follows:

**“Sec. 16-43. - Discharge of firearms.**

(a) It shall be unlawful for any person to willfully shoot or fire off a gun, pistol or any other firearm within the limits of the city.

(b) It shall be unlawful for any person to willfully discharge a handgun, rifle or shotgun upon any City owned or City leased property within three (3) miles beyond the City limits of the City of Miles City, including, but not limited to, Spotted Eagle Recreation Area, Frank Wiley Field, the City Wastewater Treatment plant and adjoining former lagoon area, the City Water Treatment Plant property and Pumping Plant Park, and the Industrial Site west of the City limits. This prohibition shall not apply to authorized users of the Miles City Police Department pistol range adjacent to the City Water Treatment Plant, nor to shotgun users of the trap shooting range at Spotted Eagle Recreation area during daylight hours.

(c) Any person who violates this section shall be punishable by a fine not exceeding \$500.00 or by imprisonment in the county jail for a period not exceeding 6 months, or both.

(d) Firearms may be discharged in an indoor or outdoor rifle, pistol, or shotgun shooting range located within the city limits if the shooting range is approved by the City Council.

(e) Subsections (a and b) do not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1, MCA.”

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

Said Ordinance read and put on its passage this 8th day of January, 2013.

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

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

**FINALLY PASSED AND ADOPTED** this 22nd day of January, 2013.

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

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

**Connie Watts**

---

**From:** ericadgriffithbhpc@gmail.com on behalf of Erica Griffith  
**Sent:** Thursday, January 03, 2013 4:18 PM  
**To:** cityclerk@milescity-mt.org; lwildman@milescity-mt.org; bburkhalter@milescity-mt.org; cwatts@milescity-mt.org  
**Subject:** Re: Joint Resolution 3576-Airport Commission members  
**Importance:** High  
**Follow Up Flag:** Follow up  
**Flag Status:** Red  
**Attachments:** Resolution 3576 - Joint Resolution with Custer County to expand airport commission to 7 members.pdf

Linda,

Attached is resolution #3576. I changed the error in the date.

I cannot change the note on exhibit "A" page 1. The minutes of the meeting of April 10, 2007 show that resolution #3139 was adopted with the exhibit identical to that on joint resolution #3576. I cannot change the exhibit retroactively.

--

Erica D. Griffith  
Attorney at Law

507 Pleasant Street  
P.O. Box 128  
Miles City, Montana 59301  
(406) 234-3054  
(406) 234-5864 (FAX)  
egriffithlaw@gmail.com

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On Wed, Jan 2, 2013 at 11:17 AM, Linda Wildman <[lwildman@milescity-mt.org](mailto:lwildman@milescity-mt.org)> wrote:

Erica,

Connie and I both have a preliminary resolution and agreement for #3576. On Exhibit "A", page 1, there is a note to Jerry concerning changing the last paragraph on this page. Could you correct and forward to Connie, Becky and myself, a corrected resolution and exhibit with change and January 8<sup>th</sup> dates?

1/3/2013

**JOINT RESOLUTION NO. 3576**

**A JOINT RESOLUTION OF THE BOARD OF COMMISSIONERS OF CUSTER COUNTY, MONTANA AND THE CITY COUNCIL OF THE CITY OF MILES CITY AMENDING THE AGREEMENT FOR JOINT ACTION FOR OPERATION OF THE CITY-COUNTY AIRPORT TO INCREASE THE MEMBERSHIP OF THE AIRPORT COMMISSION FROM FIVE MEMBERS TO SEVEN MEMBERS.**

*WHEREAS*, pursuant to Resolution 3139, adopted April 10, 2007, the City Council of the City of Miles City approved the "Agreement for Joint Action" with Custer County, Montana for the operation of the City-County Airport, a copy of which is attached hereto as Exhibit "A" and made a part hereof;

*AND WHEREAS*, the Board of Commissioners of Custer County subsequently approved such "Agreement of Joint Action" by separate resolution;

*AND WHEREAS*, the City of Miles City and the Board of Commissioners of Custer County, Montana now desire to amend the Agreement of Joint Action so as to expand the membership of the Airport Commission from five (5) members to seven (7) members;

**NOW THEREFORE, IT IS JOINTLY RESOLVED BY THE BOARD OF COMMISSIONERS OF CUSTER COUNTY, MONTANA AND THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, as follows:**

1. The fifth paragraph of the Agreement for Joint Action, attached hereto as Exhibit "A", and made a part hereof, is hereby amended to read as follows:

The joint board shall be created by the parties hereto to consist of seven (7) members. Each governing body shall select one of its own members as a member of the joint board. The remaining members of the joint board shall be selected by the joint action of said governing bodies. Appointment of persons to the joint board by the parties shall be conducted according to the appointment process of each governing body."

2. All other provisions of the Agreement for Joint Action not specifically amended hereby shall remain in full force and effect.

3. This amendment shall become effective upon its adoption by a majority of the Board of Commissioners of Custer County and its approval by a majority vote of a duly constituted quorum of the City Council of the City of Miles City at a regular meeting or duly noticed and called special meeting.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A MAJORITY VOTE OF THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY, MONTANA, THIS \_\_\_\_\_ DAY OF JANUARY, 2013.**

\_\_\_\_\_  
Commission Chairperson

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

ATTEST:

\_\_\_\_\_  
Linda Corbett, County Clerk and Recorder

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY MAJORITY  
VOTE OF A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE  
CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING THIS 8TH DAY OF  
JANUARY, 2012.**

\_\_\_\_\_  
C.A. Grenz, Mayor

ATTEST:

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

EXHIBIT "A"

Agreement for Joint Action

THE AGREEMENT, made in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between Custer County, a body politic and corporate, and the City of Miles City, Montana, a municipal corporation.

WITNESSETH: Whereas, the parties hereto have each, by resolution duly adopted, authorized that an agreement be entered into between the parties hereto for joint action as to the maintenance, operation, regulation and use of Frank Wiley Field, pursuant to the provisions of Title 67, Chapter 10, Montana Code Annotated.

NOW, THEREFORE, in consideration of the mutual benefit to be derived by the parties hereto through the maintenance, operation, regulation and use of said airport, it is hereby agreed by and between the parties hereto that each of the parties shall bear the expenses of maintenance, operation, regulation and protection in proportion to the ratio that a one and one-half (1.5) mill levy by each of said parties will derive.

IT IS FURTHER AGREED, that the term of this agreement shall continue for a period of ten (10) years from the date of this agreement or until terminated by mutual agreement of the parties hereto, unless otherwise voided by operation of law. That the title to said airport, both real and personal, shall be and remain in the City of Miles City. That each of the parties hereto shall have equal right and use of the facilities and privileges of said airport. That the cost and expense of any permanent fixtures therein shall be borne by the City of Miles City.

The joint board shall be created by the parties hereto to consist of five (5) members. Each governing body shall select one of its own members as a member of the joint board. The remaining members of the joint board shall be selected by the joint action of said governing bodies. Appointment of persons to the joint board by the parties shall be conducted according to the appointment process of each governing body.

The term of the members of the joint board shall be for three years. Staggered expiration of terms of joint board members may be established by specifying the expiration of the term of each joint board member appointed at the time of such appointment. The selection of staggered terms of members shall be drawn by lot. The term of a member from one of the governing bodies shall be no longer than the term of office of that member in the governing body. No compensation shall be allowed the members thereof. Provided, however, that said members shall be allowed actual expenses necessarily incurred in the performance of their duties. The joint board shall have all such powers, and shall perform all duties as are provided by law.

A joint fund shall be created and maintained into which shall be deposited the shall of each of the parties hereto. The City Treasurer shall act as depository of said joint fund and make such disbursements in form of warrants and upon claims duly approved as shall be ordered by the Board. (Jerry, we don't do warrants, could you change this sentence appropriately?)



**EXHIBIT "A"**

In the event either party hereto desires to terminate this agreement, notice of such intention in writing must be given to the other party at least ninety days prior to the end of the fiscal year, and upon termination of this agreement title to all the property, both real and personal, shall belong to and be vested in the City of Miles City, together with the facilities and privileges jointly owned.

If at any time during the continuance of this agreement and said parties shall deem it necessary to make any alteration in any clause, matter or thing herein contained for the more advantageous or satisfactory management of said airport, it shall be lawful for them to do so by any writing under their joint hands endorsed on this agreement and all such alterations and amendments shall be adhered to and have the same effect as if the same had been originally embodied in and formed a part of this agreement.

This agreement is made and executed in all respects in the accordance with the provisions of Title 67, Chapter 10, Montana Code Annotated, for the purpose of jointly operating the airport referred to herein, and so far as applicable the provisions of said law are made a part thereof.

All previous agreements between the parties pertaining to joint action with respect to the airport are revoked upon execution of this agreement.

IN WITNESS WHEREOF, the said parties have caused their corporate names to be subscribed and their corporate seals to be affixed, by their proper officers hereunto duly authorized, on the day and year first above written.

THE CITY OF MILES CITY, MONTANA

CUSTER COUNTY, MONTANA

BY: \_\_\_\_\_  
Its Mayor

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
County Clerk & Recorder

