

FINAL REPORT
OF THE MILES CITY ZONING COMMISSION
ON DRAFT UPDATES TO ZONING REGULATIONS AND MAP

A) Introduction:

This final report is submitted by the Miles City Zoning Commission to City Council along with draft Zoning Regulations (dated September 30, 2016) and a draft Zoning Map (titled Public Hearing III Draft). The Zoning Commission held its first public hearing on the draft regulations and map and adopted a preliminary report on August 24, 2016. The Zoning Commission held a workshop and a second public hearing on September 20, 2016, and adopted this final report.

B) Municipal Zoning Procedure:

According to 76-2-307, MCA, the City Council appoints the Zoning Commission to recommend the boundaries of the zoning districts and appropriate zoning regulations. The Zoning Commission held two public hearings on the zoning districts and draft regulations before submitting its final report to City Council. City Council must then a public hearing prior to adoption.

Per 76-2-303(2), MCA, a regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

C) Report/Findings:

Section D of the report gives an overview of the draft zoning regulations and map. Section E of the report outlines applicable zoning statutes and findings regarding the draft regulations' compliance with state law.

D) Public hearing drafts of the Zoning Regulations and Map:

Draft Regulations

The draft zoning regulations are intended to replace Chapter 24 of the current City Codes, which is entitled "Zoning." The regulations have been drafted with careful consideration for nonconformities, with a preference to avoid creating new nonconformities where possible by keeping many existing standards in place. However, it is unavoidable that new nonconformities will result from more modern regulations that address current issues.

The regulations have been drafted with sections that should be considered potential tools that could become part of a toolkit for future planning of the City of Miles City. For instance, included are sections on off-street parking and loading, a planned unit development overlay

district, a new conditional use process, etc. The City Council could determine certain tools are not necessary for Miles City at this time and eliminate certain provisions. If additional tools are needed, the City Council could direct Land Solutions to draft additional sections.

The following are discussions regarding the major changes to the proposed zoning regulations by article and/or major topic:

Article I – In General

Article I of the existing zoning code includes several specific provisions that are proposed to be relocated, changed, or deleted. In the draft update, the definitions are relocated to Article V. The following sections of the existing Article I are either relocated and changed, or deleted:

1. Sec. 24-11. - Nonconforming uses. *Relocated to Article IV, Sec. 24-89, and modified.*
2. Sec. 24-12. - Building permits. *Replaced with other language in Article IV.*
3. Sec. 24-13. - Exceptions to maximum height requirements. *Deleted and addressed by definition of “Building height” in Article V.*
4. Sec. 24-14. - Offstreet parking for places of public assembly. *Deleted and addressed in Sec. 24-51 – Off-Street Parking and Loading.*
5. Sec. 24-15. - Building setbacks. *Deleted and addressed in Sec. 24-41 – Building Setbacks and Sec. 24-42 – Yards.*
6. Sec. 24-16. - Mobile homes—Building permit required. *Deleted and replaced with other language in Article IV.*
7. Sec. 24-17. - Same—Footings, piers and caps. *Relocated to Sec. 24-61 – Mobile Homes.*
8. Sec. 24-18. - Maximum height of fences and hedges; projecting tree branches or shrubbery. *Relocated to Sec. 24-49, and modified.*
9. Sec. 24-19. - Signs prohibited on certain premises. *Deleted and addressed under separate ordinance.*
10. Sec. 24-20. - Signage for bed and breakfast. *Deleted and addressed under separate ordinance.*
11. Sec. 24-21. - Special uses. *Modified and relocated to Sec. 24-68 – Keeping of chickens and Sec. 24-69 – Animal rescue shelters.*

In addition, other sections addressing several general provisions typical of municipal zoning codes have been added to Article I.

Article II – Zoning Districts

Article II has been revised in many ways. First, because the primary intent of Article II is to establish the various zoning districts and the standards and allowed uses specific to each district, several sections are eliminated from the draft or relocated and reworded in more appropriate

sections. For instance, Sec. 24-52 of the existing code, entitled “Article not retroactive in effect,” has been deleted because it addresses non-conforming uses, which are already addressed elsewhere (now Article IV, Sec. 24-89).

Sec. 24-58 of the existing code includes general provisions affecting residential districts, some of which have been deleted because of the antiquated language; others have been relocated into more appropriate sections. Sec. 24-69 of the existing code, which addresses certain uses in the floodplain, is deleted from the draft because the city has a floodplain management ordinance. The order of the various zoning districts has also been revamped to a more logical order.

The zoning districts have also been substantially modified in the draft (please also see the draft map).

1. The MH-A district is proposed to include all of existing MH-B, thereby eliminating the current MH-B district.
2. Existing MH-C is proposed to be replaced by MH-RV, a district that would allow RV parks in addition to mobile home parks.
3. The Historic Mixed Use (HMU) district is proposed to be renamed the Central Business District (CBD), with some additional standards.
4. The General Commercial (GC) district is proposed to remain, but with some areas replaced by a new Highway Commercial District (HWC).
5. The existing Heavy commercial (HC) district is proposed to be replaced by a new Heavy Commercial/Light Industrial (HCLI) district, which would allow light industrial uses in addition to commercial.
6. The existing Industrial (I) district is proposed to be replaced by the Heavy industrial (HI) district.
7. The existing Light Industrial (LI) district is proposed to be eliminated in order to consolidate it into the new HCLI district.
8. The Open Space (OS) district remains.
9. The existing AG agriculture district is proposed to be eliminated due to the lack of area with that zoning designation within the city limits.
10. The Medical campus (MC) district remains in the draft.
11. The draft also includes two proposed new overlay districts: the Planned Unit Development Overlay District (PUDOD) and the Sexually Oriented Business Overlay District (SOBOD).

Several changes have been made to the standards and permitted and conditional uses in each district. It is important for reviewers to compare standards and land uses in the draft to those in the existing code, as well as to consider whether the proposed draft and map encompass most of the current land uses in the districts. This is important so the revisions do not create many new nonconforming uses.

Article III – Application of Zoning Regulations To All Districts

Article III of the new draft changes the article from “Administration and Enforcement” to “Application of Zoning Regulations To All Districts.” This article describes and illustrates how setbacks and yards are measured, and includes other elements of the existing code that currently seem out of place. New sections have been added to regulate lot development including storm water management, outdoor lighting, landscaping, and off-street parking.

There are also new sections for standards for specific land uses that apply to the land use regardless of district. Some of these incorporate existing standards for those uses, such as the requirements for mobile homes. The regulations for keeping of chickens, animal rescue shelters, and antennae, antenna support structures, and wireless communications facilities are to a large extent preserved and recodified in the new draft. However, some modifications have been made to reflect the proposed new administrative provisions of Article IV. For instance, the special permit review and site plan review procedures for certain antennae, antenna support structures, and wireless communications facilities are modified to reflect a proposed conditional use site plan review process (further addressed below).

Article IV – Administration and Enforcement

Article IV is where the administrative provisions are located in the draft. This is where reviewers will find many changes to how development applications are currently processed. The procedures for obtaining the various types of permits are spelled out in detail, as are the enforcement provisions.

Of particular interest to reviewers is Sec. 24-91 – Conditional Use Permit Review. This section is intended to replace the current site plan review procedure that is administered through the Planning Board and City Council. Montana state law doesn’t specifically authorize such a review by planning boards, but does place review of special exceptions in the hands of the Board of Adjustment. The proposed draft would be in line with state law, and those uses listed as conditional uses would require review and approval by the Board of Adjustment as special exceptions to the permitted use. This way, the same board that reviews variances and appeals would also review conditional uses. The process would be substantially similar to that of zoning variances, but the uses would be subject to review based the criteria for conditional uses instead. One thing to consider is this procedure puts more burden on the Board of Adjustment but lightens the workload of the Planning Board and City Council, but Land Solutions staff feel it more accurately reflects the duties assigned to the different boards under state law.

Article V – Definitions

All of the zoning definitions have been moved to Article V, including those for antennae, antenna support structures, and wireless communications facilities. Several new terms have been included in the draft, while the definitions for some existing terms have been modified for clarity. Some existing definitions have been eliminated because the terms did not appear in the regulations.

Airport Zoning

Articles IV and V of the existing zoning code address the Frank Wiley Field Influence Area and Airport Zoning. Statutes for regulating areas around airports have changed since these articles were adopted, and updating the airport regulations are beyond the scope of the zoning update project. In addition, Chapter 24, Zoning, will have a jurisdictional area that includes only the city. Therefore, the zoning updates are proposed to remove those to articles from Chapter 24, move them to Chapter 25, and recodify them appropriately.

Buildings for Lease or Rent Regulations

The draft zoning regulations have also been authored in a manner intended to include all of the elements of 76-8-107, MCA, thus exempting all buildings for lease or rent from special review provided they are in conformance with the zoning regulations.

E) Zoning Statutes:

The following are applicable municipal zoning statutes and criteria and draft findings in *italics* for consideration by the Zoning Commission:

- 1) **76-2-301. Municipal zoning authorized.** For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

Finding 1: The draft zoning regulations promote the health, safety, morals, and the general welfare of the community by regulating the height and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards and other open spaces, the density of housing, and the location and uses of buildings, structures and land. The proposed zoning regulations and map are authorized by 76-2-301, MCA.

- 2) **76-2-302. Zoning districts.**

(1) For the purposes of [76-2-301](#), the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

Finding 2: The draft zoning regulations and map would divide the municipality into districts of the number, shape, and area that would be best suited to carry out the purposes of municipal zoning statutes as referenced in the draft regulations. Within the districts, the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land would be regulated.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

***Finding 3:** The draft zoning regulations and map would be uniform for each class or kind of buildings throughout each zoning district, and the regulations in each district differ from those in other districts.*

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

***Finding 4:** The draft zoning regulations address 76-2-302(3), MCA by allowing manufactured housing as residential housing in the residential districts.*

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in [15-1-101](#).

***Finding 5:** The draft zoning regulations address 76-2-302(4), MCA by defining manufactured housing as statute defines the term.*

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

***Finding 6:** The draft zoning regulations address 76-2-302(4), MCA by making no attempt to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.*

3) 76-2-303. Procedure to administer certain annexations and zoning laws -- hearing and notice.

(1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation if the proposed municipal zoning regulations for the annexed property:

- (i) authorize land uses comparable to the land uses authorized by county zoning;
 - (ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to Title 76, chapter 2, part 1 or 2; or
 - (iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to Title 76, chapter 1, for the annexed property.
- (b) A joint hearing authorized under this subsection (3) fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation.

Finding 6: *The draft zoning regulations address 76-2-303, MCA with Section 24-96, which outlines the processes for Zone Changes and Zoning Amendments, and Section 24-14, Zoning upon annexation.*

4) 76-2-304. Criteria and guidelines for zoning regulations.

- (1) Zoning regulations must be:
 - (a) made in accordance with a growth policy;

Finding 8: *The draft zoning regulations are made in accordance with the 2015 Growth Policy, including the following from the Implementation Strategy:*

- *Land Use Goal #1 - Provide a Predictable Development Environment.*
 - *Objective 1.1: Update land use regulations to provide greater clarity and flexibility.*
 - *Action "a": Update the zoning regulations to clarify procedures, meet the land use and development needs of the community, and to provide for flexibility while protecting existing residents.*
 - ✓ *Growth Policy Finding 8-a: The proposed zoning has been drafted to clarify procedures, meet the land use and development needs of the community, and to provide for flexibility while protecting existing residents.*
- *Land Use Goal #2 - Promote Citizen Involvement in Land Use Issues*
 - *Objective 2.1: Engage citizens during public review of land use issues and make information available.*
 - *Action "b": Incorporate citizen comments into land use decisions by addressing them prior to making motions.*
 - ✓ *Growth Policy Finding 8-b: The proposed zoning has been drafted to promote citizen involvement with public reviews of zone changes, conditional uses, variances, and appeals, which allow the appropriate boards to incorporate citizen comments into land use decisions so the boards can address the public comments prior to making motions.*

- *Action “c”:* Consider requiring developers to hold neighborhood meetings prior to zone changes and major subdivision submittals in order to bring the affected public into the process earlier.
- ✓ *Growth Policy Finding 8-c:* Upon consideration of the benefits and drawbacks, the draft does not require developers to hold neighborhood meetings prior to zone change submittals. This is an added step that the Zoning Commission and City Council could add to the zoning regulations prior to adoption.
- *Land Use Goal #3 - Balance Property Rights with the Common Interests of the Community.*
 - *Objective 3.1: Protect private property rights and respect property owners’ wishes to enjoy and gain economic return from their properties and investments while ensuring that other public and private interests are not unreasonably compromised or impacted by land uses and development projects.*
 - *Action “a”:* While considering land use decisions, balance the rights of applicants with those of potentially impacted parties.
- ✓ *Growth Policy Finding 8-d:* With several types of public reviews, including zone changes, conditional uses, variances, and appeals, the zoning will allow the appropriate boards to balance the rights of applicants with those of potentially impacted parties when considering land use decisions.
- *Land Use Goal #4 - Provide for the Logical Expansion of the City’s Boundaries that is Compatible with Existing Development and is Fiscally Responsible.*
 - *Objective 4.2: Develop and implement zoning that guides future development but also protects existing development from unwanted impacts.*
 - *Action “a”:* Update the City’s zoning.
- ✓ *Growth Policy Finding 8-e:* The zoning updates have been drafted to guide future development while protecting existing development from unwanted impacts. This is accomplished in numerous ways in the zoning update with standards such as appropriate setbacks, building heights, and mitigation requirements under certain circumstances, such as landscaping and requirements for stormwater management.
- *Economy Goal #2 - Enhance the Economic Viability of Downtown Miles City*
 - *Objective 2.3: Preserve the historic character of downtown.*
 - *Action “a”:* Establish a façade improvement program.
 - *Action “b”:* Establish historic design guidelines for downtown buildings, signage and other improvements.

- ✓ *Growth Policy Finding 8-f: The zoning updates have been drafted with design guidelines for the Central Business District to meet this goal and objective. These guidelines include ground floor glazed area requirements, design elements that give the developers options, and requirements to address rehabilitation of historic structures. See Table II.14, pages 16 – 17 of the draft.*
- *Economy Goal #3 - Support Industrial and Commercial Development*
 - *Objective 3.1: Cluster industrial uses along Baker Highway.*
 - *Action “a”: Do as part of zoning code update.*
- ✓ *Growth Policy Finding 8-g: The zoning updates do not propose to cluster industrial uses along the Baker Highway because that area is outside the city limits and the city is no longer authorized to zone outside the city limits. However, the regulations have been drafted to provide appropriate guidelines for commercial and industrial development and allow those uses in appropriate locations. Future annexations along the Baker Highway can allow for clustered industrial uses along the Baker Highway.*
- *Housing Goal #1 - Provide a Range of Housing Options for all Residents*
 - *Objective 1.1: Support the development of housing for all Miles City residents including affordable housing, senior housing, work-force housing, and low-income housing.*
 - *Action “d”: Update the zoning code and map to provide adequate locations for all housing types.*
- ✓ *Growth Policy Finding 8-h: The zoning updates are intended to allow greater flexibility in development of various housing types with reduced lot sizes and setbacks and greater allowances for multifamily housing.*
- *Housing Goal #3 - Make Zoning Code More Flexible*
 - *Objective 3.1: Reduce minimum lot area in residential districts to encourage development on small lots.*
 - *Action “a”: Do as part of zoning code update.*
- ✓ *Growth Policy Finding 8-i: The zoning regulations are proposed to reduce the minimum lot area requirements in residential districts.*
 - *Objective 3.2: Provide flexibility with minimum parking requirement for multi-family, special needs and senior housing.*
 - *Action “a”: Do as part of zoning code update.*
- ✓ *Growth Policy Finding 8-j: The zoning regulations reduce the numbers of required parking spaces for multi-family housing and other types of residential land uses.*

➤ *Public Facilities and Local Services #4 - Maintain Public Safety*

- *Objective 4.1: Coordinate with Miles City emergency responders on new commercial and residential development to ensure adequate response times and that sufficient infrastructure is in place.*

- *Action “a”: When reviewing development project applications, ensure adequate public safety resources are in place concurrent with development.*

- ✓ *Growth Policy Finding 8-k: The zoning regulations are proposed to provide for public review of conditional uses and variances. For these public reviews, the Administrator may seek input from emergency service providers, and a new development’s impact on public safety is a criterion used for the review. The Board of Adjustment may condition such projects if mitigation is warranted based on service provider comments and expected impacts.*

(b) [The zoning regulations must be] designed to:

- (i) secure safety from fire and other dangers;
- (ii) promote public health, public safety, and the general welfare; and
- (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Finding 9: *The draft zoning regulations are designed to secure safety from fire and other dangers by limiting building heights and requiring setbacks and other building separations.*

Finding 10: *The draft zoning regulations are designed to promote public health, public safety, and the general welfare by limiting housing density and having other minimum standards to limit impacts.*

Finding 11: *The draft zoning regulations are designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements, by requiring adequate access, providing clear vision triangles, sign standards, off-street parking requirements, and by directing land uses and density to appropriate areas of town.*

(2) In the adoption of zoning regulations, the municipal governing body shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) promotion of compatible urban growth;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Finding 12: *The draft zoning regulations would provide adequate light and air by limiting building heights, providing appropriate setbacks in appropriate districts, and limiting density and providing appropriate minimum lot sizes.*

Finding 13: *The draft zoning regulations give consideration to the effect on motorized and nonmotorized transportation systems by providing clear vision triangles, sign standards, off-street parking requirements, and directing land uses and density to appropriate areas of the city.*

Finding 14: *The draft zoning regulations would promote compatible urban growth by applying standards consistent with the current development pattern of the city.*

Finding 15: *The draft zoning regulations give consideration to the character of the municipality and its peculiar suitability for particular uses by applying standards consistent with the current development pattern of the city.*

Finding 16: *The draft zoning regulations give consideration to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area by applying standards consistent with the current development pattern of the city and giving clear and reasonable standards.*

5) 76-2-305. Alteration of zoning regulations -- protest.

- (1) A regulation, restriction, and boundary may be amended, supplemented, changed, modified, or repealed. The provisions of [76-2-303](#) relative to public hearings and official notice apply equally to all changes or amendments.
- (2) An amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the city or town council or legislative body of the municipality if a protest against a change pursuant to subsection (1) is signed by the owners of 25% or more of:
 - (a) the area of the lots included in any proposed change; or
 - (b) those lots or units, as defined in [70-23-102](#), 150 feet from a lot included in a proposed change.
- (3) (a) For purposes of subsection (2), each unit owner is entitled to have the percentage of the unit owner's undivided interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in [70-23-102](#), spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located.
 - (b) The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change pursuant to subsection (2) or by the presiding officer of the association of unit owners.

Finding 17: *The draft zoning regulations address the requirements of 76-2-305, MCA, and its requirements shall be met through this adoption process. The proposed regulations will not become effective without a successful vote of the City Council or if successful protest is achieved.*

6) 76-2-306. Interim zoning ordinances. *(not applicable at this time)*

Finding 18: *76-2-306, MCA is not applicable because the proposed zoning regulations are not proposed as an interim zoning ordinance.*

7) 76-2-307. Zoning commission. In order to avail itself of the powers conferred by this part, except [76-2-306](#), the city or town council or other legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

Finding 19: *Miles City has a Zoning Commission appointed in compliance with 76-2-307, MCA, which is affirmed by Section 24-94 of the draft zoning regulations. The procedural requirements of 76-2-307, MCA are being followed through the process of revising the zoning regulations and map. The Zoning Commission held its first public hearing on the draft zoning regulations, map and preliminary report on August 24, 2016, where the preliminary report was unanimously approved and changes to the draft zoning map and regulations were requested. The Zoning Commission made a final report and held a public hearing on the draft zoning regulations, map and the final report on September 20, 2016, after which its final report is being submitted to the City Council. The City Council will hold its public hearings and take action after it has received the final report of the Zoning Commission.*

8) 76-2-308. Enforcement of zoning regulations and ordinances.

(1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of any regulation or ordinance made thereunder.

Finding 20: *Upon completion of the zoning update process, the City Council will have passed an ordinance for enforcement of the zoning ordinance.*

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

Finding 21: *The proposed zoning regulations provide for enforcement with language consistent with 76-2-308(2), MCA.*

9) 76-2-309. Conflict with other laws.

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

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

***Finding 22:** The proposed zoning regulations address 76-2-309, MCA with Section 24-7, which states, “Wherever conflicts exist between the standards imposed by these regulations and any such standard imposed by other local ordinances or regulations or state statutes, the higher or more restrictive standards shall govern. See 76-2-309, MCA.”*

10) 76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries.

(1) Except as provided in [76-2-312](#) and except in locations where a county has adopted zoning or subdivision regulations, a city or town council or other legislative body that has adopted a growth policy pursuant to chapter 1 for the area to be affected by the regulations may extend the application of its zoning or subdivision regulations beyond its limits in any direction subject to the following limits:

- (a) up to 3 miles beyond the limits of a city of the first class as defined in [7-1-4111](#);
- (b) up to 2 miles beyond the limits of a city of the second class; and
- (c) up to 1 mile beyond the limits of a city or town of the third class.

(2) When two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by [76-2-302](#), [76-2-311](#), and this section, then the extension of zoning or subdivision regulations, or both, by these cities must terminate at a boundary line agreed upon by the cities.

***Finding 23:** The zoning regulations are proposed to be revised to not extend the municipal zoning regulations beyond the municipal boundaries because Custer County has adopted zoning and subdivision regulations in the locations around the City of Miles City. No applicable cities exist with respect to 76-2-310(2), MCA.*

11) 76-2-311. Administration of regulations in extended area.

- (1) A city or town council or other legislative body may enforce regulations adopted pursuant to [76-2-310](#), as if the property were situated within its corporate limits, until the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.
- (2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area that is to be affected. These representatives must be appointed by the board of county commissioners. Representation must cease when the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.

***Finding 24:** Custer County has adopted a growth policy and accompanying zoning and subdivision regulations in the area around the City of Miles City; therefore, the City Council may not enforce municipal zoning regulations in an extended area outside the municipal boundaries. The updated zoning regulations and map are intended to reflect the recent actions by Custer County.*

12) 76-2-312. Exclusion for commission-manager plan municipalities. A city or town which has as its plan of government the commission-manager plan shall be excluded from the provisions of [76-2-310](#) and [76-2-311](#) which define extraterritorial authority to review proposed subdivisions.

***Finding 25:** The City of Miles City does not operate with the commission-manager plan under Title 7, Chapter 3, Part 43, MCA; therefore, 76-2-312, MCA is not applicable.*

13) 76-2-313. Renumbered. ([76-2-411](#))

14) 76-2-314. Renumbered. ([76-2-412](#))

***Finding 26:** 76-2-312 and 314, MCA have been renumbered outside of the municipal zoning statutes. However, these have become incorporated into Title 76, Chapter 2, Part 4, MCA, which applies to any zoning authorized under Title 76, Chapter 2. These statutes are regarding “Application to Governmental Agencies Group and Foster Homes”. The proposed zoning regulations address these requirements with Section 24-88, which addresses situations when government agencies propose to use land contrary to these regulations, and with Section 24-87, which addresses uses preempted by state statute; if a use preempted by state statute is indicated as prohibited by the zoning regulations, the use is treated as a conditional use subject to review by the Board of Adjustment.*

15) 76-2-315. Violations and penalties.

- (1) A violation of this part or of such ordinance or regulation made pursuant to [76-2-308](#)(1) is a misdemeanor, and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both.
- (2) It is also empowered to provide civil penalties for such violation.

***Finding 27:** As allowed by 76-2-315, MCA, Section 24-98 of the proposed zoning regulations addresses violations, with subsection (d) providing for penalties, to include fines for misdemeanor zoning violations and civil penalties for the same.*

16) 76-2-316 through 76-2-320 reserved. (not applicable at this time)

17) 76-2-321. Board of adjustment.

(1) A city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules contained in the ordinance.

***Finding 28:** The draft regulations include use of the existing Board of Adjustment for the purposes outlined by 76-2-321(1), MCA.*

(2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

***Finding 29:** The draft regulations include use of the existing Board of Adjustment to exercise the above-authorized powers and to not reserve those powers to the City Council.*

(3) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this part. Meetings of the board must be held at the call of the presiding officer and at other times that the board may determine. The presiding officer or in the presiding officer's absence the acting presiding officer may administer oaths and compel the attendance of witnesses.

***Finding 30:** The Board of Adjustment uses the BOA handbook for its rules, and should consider adopting updated rules in accordance with the final zoning regulations. The draft addresses the other requirements of 76-2-321(3), MCA with the provisions in Section 24-90.*

18) 76-2-322. Membership and term of board members -- vacancies.

(1) The board of adjustment shall consist of not less than five or more than seven members to be appointed for a term to be specified by the city or town council or other legislative body or, if no term is specified, then for a term of 3 years. A member is removable for cause by the appointing authority upon written charges and after public hearing.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

***Finding 31:** The draft regulations address compliance with 76-2-322, MCA with the provisions in Section 24-90.*

19) 76-2-323. Powers of board of adjustment.

- (1) The board of adjustment shall have the following powers:
 - (a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any ordinance adopted pursuant thereto;
 - (b) to hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance;
 - (c) to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.
- (2) In exercising the above-mentioned powers, such board may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

***Finding 32:** Section 24-90 of the draft regulations gives the Board of Adjustment the above powers, being to hear and decide on appeals of the Zoning Administrator’s decisions, orders, etc., to hear and decide on special exceptions, which are reviewed as “Conditional Use Permits”, and to authorize variances. All requirements of 76-2-323, MCA have been incorporated into the draft zoning regulations.*

20) 76-2-324. Vote needed for board action. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.

***Finding 33:** Section 24-90 of the draft regulations require the concurring vote of four members of the Board of Adjustment to exercise its powers, as required by 76-2-324, MCA.*

21) 76-2-325. Public access to board activities.

- (1) All meetings of the board shall be open to the public.
- (2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

***Finding 34:** Section 24-90 of the draft regulations includes the requirements of 76-2-325, MCA.*

22) 76-2-326. Appeals to board of adjustment.

(1) Appeals to the board of adjustment may be taken by a person aggrieved or by an officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. An appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal.

***Finding 35:** Section 24-93 of the draft regulations includes the requirements of 76-2-326(1), MCA.*

(2) The officer from whom the appeal is taken shall, in a timely manner, transmit to the board all papers constituting the record upon which the action appealed was taken.

***Finding 36:** Section 24-93 of the draft regulations includes the requirements of 76-2-326(2), MCA.*

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In that case, proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

***Finding 37:** Subsection 24-93 of the draft regulations includes the requirements of 76-2-326(3), MCA.*

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice of the hearing as well as due notice to the parties in interest, and decide the appeal within a reasonable time.

***Finding 38:** Section 24-93 of the draft regulations requires that after submitting the notice of appeal, the appeal shall be placed on the agenda of the next Board of Adjustment meeting for which the notice requirements of the regulations can be met, and that an appeal be tabled for no more than 35 days. This would allow for decisions on appeals within a reasonable time. The draft regulations also require public notice of the hearing and due notice to the parties in interest.*

(5) At the hearing, any party may appear in person or by the party's attorney.

***Finding 39:** Subsection 24-93(b)(8) of the draft regulations reflects 76-2-326(5), MCA.*

23) 76-2-327. Appeals from board to court of record.

(1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau

of the municipality may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of the petition, the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board of adjustment and shall prescribe in the writ the time within which a return must be made and served upon the relator's attorney, which may not be less than 10 days and may be extended by the court. The allowance of the writ does not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board, and on due cause shown, grant a restraining order. The board of adjustment may not be required to return the original papers acted upon by it, but it is sufficient to return certified or sworn copies of the original papers or of portions of the original papers that may be called for by the writ. The return must concisely set forth other facts that may be pertinent and material to show the grounds of the decision appealed from and must be verified.

(3) If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence that it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the proceedings upon which the determination of the court must be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

***Finding 40:** Subsection 24-93(b)(11) of the draft regulations refers to 76-2-327, MCA, which controls processes after decisions of the Board of Adjustment. Although appeals of decisions of the Board of Adjustment would likely require legal defenses or responses, this section of state law and the applicable regulations do not outline specific actions required by the city or its representatives.*

24) 76-2-328. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

***Finding 41:** 76-2-328, MCA, does not need to be addressed by the zoning regulations, but is a statute for the city and its representatives to be aware of in future administration of the regulations.*

25) 76-2-329 through 76-2-339 reserved. (not applicable at this time)

26) 76-2-340. Effect on amateur radio antenna. A resolution or rule adopted pursuant to this part may not:

(1) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States; or

Finding 42: *The draft regulations do not prohibit amateur radio antennae, and the definition of "Building height" (page 87) excludes antennae from building height measurements.*

(2) *[A resolution or rule adopted pursuant to this part may not]* establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground.

Finding 43: *The draft regulations exclude antennae from building height measurements, and amateur radio antennae with total heights of up to 100 feet are permitted in all districts.*

Finding 44: *The draft regulations allow for amateur radio antenna as required by these sections and comply with 76-2-340, MCA.*