

ORDINANCES
MILES CITY, MONTANA

ORDINANCE NO. 1317

AN ORDINANCE REVISING ZONING CODE SECTIONS 24-90, 24-91, AND ARTICLE V (DEFINITIONS), SO AS TO CALL FOR REVIEW OF CONDITIONAL USE PERMITS BY CITY COUNCIL.

WHEREAS, the City Council of the City of Miles City has determined that for prudent administration of the Zoning Code, the City Council should review all applications for conditional use permits;

AND WHEREAS, Section 24-96 of the Code of Ordinances of Miles City, Montana requires that proposed revisions to the zoning code or zoning map be referred to the City Zoning Commission for public hearing and recommendation to the City Council prior to any action by the City Council upon such application;

AND WHEREAS, the Miles City Zoning Commission, on November 30, 2017, upon public hearing and deliberation, recommend to the City Council that such changes not be approved.

AND WHEREAS, the City Council finds that the proposed revisions to conditional use permit review process, following public hearing at the City Council level for additional public comment, are in the best interests of the City and its residents.

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

Section 1. City Code Section 24-90 shall be amended to read as follows:

Sec. 24-90. – Board of Adjustment.

- a) The Board of Adjustment is established to act on variances and appeals of the Administrator decisions and actions. The Board of Adjustment shall not hear matters related to conditional uses, and shall not review or approve conditional use permit applications.
- b) The Board of Adjustment consists of five members appointed by the mayor for staggered three year terms, and subject to the confirmation by the City Council. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Board members serve without compensation. A Board member is removable for cause by the City Council upon written charges and after public hearing.
- c) The Board of Adjustment shall appoint one of its members as chairman and will set its operating rules in accordance with 76-2-321 through 76-2-328, Montana Code Annotated.
- d) All official files of the Board of Adjustment shall be held in the offices at City Hall.
- e) Meetings of the Board of Adjustment must be held at the call of the chairman and at other times that the board may determine.
- f) The chairman or in the chairman's absence the acting chairman may administer oaths and compel the attendance of witnesses.
- g) The concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Administrator; to decide in favor of the applicant on any matter upon which the Board of Adjustment is required to pass under these regulations; or to effect any variation in these regulations.
- h) All meetings of the Board of Adjustment shall be open to the public.
- i) The Board of Adjustment 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,

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and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the offices at City Hall and shall be a public record.

Section 2. City Code Section 24-91 shall be amended to read as follows:

Sec. 24-91. – Conditional Use Permit Review.

a) **Purpose:** Conditional uses require public review for activities that may have a significant impact on the landscape setting, public facilities, or neighboring land uses. Conditional uses may be compatible with the permitted uses in a zoning district, but require individual review of their location, scale, design, and configuration, and may include the imposition of special conditions or mitigations in order to ensure the appropriateness of the use at a particular location within a given zoning district.

b) **Applicability:** The conditional uses for each district are listed in the permitted and conditional use tables in the various districts sections in Article II. When a proposed use is listed as a conditional use in the site's zoning district, the following require review under this Section:

1. Any new conditional uses;
2. Any non-minor changes of occupancy resulting in a different conditional use, as determined by the Administrator;
3. Any expansion to an existing use listed as a conditional use involving addition to buildings or outdoor areas directly associated with the conditional use that is greater than 25 percent of the existing square footage or 5,000 square feet, whichever is less; and
4. Changes in use where the parking requirements will exceed 25 percent of the existing use.

c) **Procedure:** The following is the typical procedure for an applicant to apply for and receive a Conditional Use Permit:

1. The applicant shall submit a properly completed Conditional Use Permit application form, a site plan, any supporting materials necessary to demonstrate compliance with these regulations, and the required application fee at City Hall.
2. The Administrator shall determine whether the application is complete and sufficient for review. When an application is determined incomplete or insufficient, the Administrator shall provide written notice to the applicant indicating what information must be submitted for the review to proceed.
3. After determining a Conditional Use Permit application is complete and sufficient, the Administrator shall place a public hearing on the proposed conditional use on the agenda of the next City Council meeting for which the notice requirements of these regulations can be met (Section 24-97), and at which time will allow for its proper consideration.
4. The Administrator shall give notice of the public hearing in accordance with Section 24-97.
5. The Administrator shall prepare, or contract for preparation of, a report that describes the proposed conditional use, its site, its context, and its compliance, or failure to comply, with the applicable requirements of these regulations. In preparation of the report, the Administrator may seek input from the police, fire, parks, sewer and water, streets, solid waste and other departments as well as other agency and service providers including the Montana Department of Transportation, local school district, utility service providers, Montana Department of Environmental Quality and others. In the report the Administrator shall propose findings of fact and a recommendation of approval, approval with conditions or denial of the proposal for the City Council's consideration.

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6. The City Council shall conduct a hearing on the proposed conditional use. At that hearing, the City Council shall review the particular facts and circumstances of the proposed conditional use and adopt findings of fact in support of its decision. If the City Council finds the application complies with the evaluation criteria in (d), below it shall approve the application. If the City Council finds the application fails to comply, it shall deny the application. All decisions by the City Council shall require the majority vote of a quorum of the Council, with the Mayor having the authority to break any ties.
 7. Conditions may be attached to approval of any Conditional Use Permit as provided in (e) below, provided the City Council specifically identifies the basis for each condition.
 8. Consideration of a Conditional Use Permit application may be tabled for no more than 35 calendar days.
 9. Within 10 days after a decision on the Conditional Use Permit application is made, the Administrator, working on behalf of the City Council, shall notify the applicant of the decision and any conditions attached to the approval.
 10. Upon the applicant demonstrating compliance with any conditions required by the City Council to the Administrator, the Conditional Use Permit will be issued by the Administrator within 10 days.
 11. Approval of a conditional use by the City Council does not require the Administrator to permit any activity that is found to not comply with other applicable requirements.
- d) **Evaluation Criteria.** The City Council, after weighing and evaluating the proposed use in light of the criteria set forth below, shall grant a Conditional Use Permit if the application, supplemental information, public hearing and other evidence demonstrate that:
1. The proposed use complies with the applicable standards and the requirements of the zoning district in which the project is proposed;
 2. The proposed use, including mitigation measures, shall have no more adverse effects on the health, safety, or welfare of persons living or working in the neighborhood, or shall be no more injurious to property or improvements in the neighborhood than would any other permitted or conditional uses in the same district. In making such determination, consideration shall be given to the location, type, height, scale, layout, and the type and extent of landscaping and screening on the site, as well as measures proposed by the applicant to minimize impacts to neighborhood;
 3. Adequate facilities and services are, or will be, through the application of these regulations and the adoption of conditions, made available to serve the proposed use including police, fire, parks, sewer, water, streets, motorized and non-motorized transportation, drainage, solid waste, schools and other facilities and services as appropriate;
 4. Adequate measures shall be taken as necessary to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads; and
 5. No use shall be constructed or operated so as to cause excessive noise, vibrations, smoke, dust or other particulate matter, toxic or noxious matter, humidity, heat or glare into a residential district. "Excessive" is defined for these purposes as a degree that could be observed by the Administrator and City Council to be injurious to the public health, safety or welfare.
- e) **Conditions.** Conditions may be imposed upon the approval of any Conditional Use Permit, if:

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1. They are clearly designed to ensure compliance with one or more specific requirement of these or other adopted regulations the city has the ability to enforce;
 2. They are clearly designed to ensure the applicant complies with other laws or regulations;
 3. They are directly related to the anticipated impacts of the proposed use;
 4. They are roughly proportional to the anticipated impacts of the proposed use;
 5. The applicant offers to take specific actions in relation to the proposal that can be ensured through the implementation of a condition; or
 6. That conditions are deemed necessary to protect the public health, safety and general welfare.
- f) **Approval Period.** Conditional Use Permits are typically valid for two years from the date of approval by the City Council, during which time all construction must be completed and compliance with the permit demonstrated. After this time, the use must remain in compliance with the City Council approval and these regulations. However:
1. A Conditional Use Permit may be granted with a shorter approval period as deemed appropriate by the City Council with a justifiable reason related to protecting public health and safety or to ensure compliance with these regulations or other applicable regulations or laws.
 2. At the end of the approval period the City Council may, at the request of the applicant, extend its approval for a mutually agreed-upon period of time. The City Council may issue more than one extension. For a permit to be extended, the applicant may be required to submit substantiating evidence justifying the request and showing good cause for extending the permit period.

Section 3. City Code Chapter 24, Article V, "Definitions," shall be amended as follows:

ARTICLE V. – DEFINITIONS

Conditional Use Permit: A permit issued for any land use or building activity listed as a "conditional use" in the various zoning districts following review of a conditional use by the City Council and the applicant meeting any conditions imposed by the City Council.

Section 4. This Ordinance shall become effective thirty (30) days after its final passage.

Said Ordinance read and put on its passage this 12th day of December, 2017.

ATTEST:



Lorrie Pearce, City Clerk



John Hollowell, Mayor

FINALLY PASSED AND ADOPTED this 9th day of January, 2018.

ATTEST:



Lorrie Pearce, City Clerk



John Hollowell, Mayor

Affidavit of Publication

STATE OF MONTANA }
County of Custer } ss.

Mary Rose Bovee, being duly sworn on her oath, says that she has been the principal clerk of the printer of the MILES CITY STAR, a daily newspaper of general circulation, printed and published at Miles City, in said County and State. **City of Miles City, Legal Notice.**

Ordinance Number 1317 . A printed and true copy which, cut from the columns of said newspaper, is hereto attached, and made a part hereof, was printed and published in said newspaper, in the regular and entire issue of every number of the paper during the period and time of publication, on the following dates

December 15, 2017 and January 5, 2018

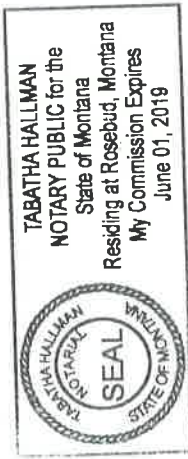
Signed Mary Rose Bovee

Subscribed and sworn to before me this 5th

day of January, 2017
Tabatha Hallman

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

June 1, 2019.



LEGAL NOTICE
NOTICE IS HEREBY GIVEN that the City Council of the City of Miles City at a Regular Council Meeting held on Tuesday, December 12, 2017 at 7:00 p.m., passed on first reading the following Ordinance:
ORDINANCE NO. 1317: AN ORDINANCE REVISING ZONING CODE SECTIONS 24-90, 24-91, AND ARTICLE V (DEFINITIONS), SO AS TO CALL FOR REVIEW OF CONDITIONAL USE PERMITS BY CITY COUNCIL.
The above Ordinance is on file and available for public inspection at the City Clerk's Office at City Hall, 17 S. 8th Street, Miles City, Montana. You are further notified that objections to the final adoption of the Ordinance will be heard by the City Council at its regularly scheduled meeting in the Council Chambers at City Hall, 17 S. 8th Street, Miles City, Montana, on Tuesday, January 9, 2018 at 7:00 p.m.
For information or questions you may contact the City Clerk at 234-3462.
BY ORDER OF THE CITY COUNCIL
Lorrie Pearce
City Clerk
(Published December 15, 2017 and January 5, 2018)
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