

**ORDINANCES**  
**MILES CITY, MONTANA**

**ORDINANCE NO. 1328**

**AN ORDINANCE CHANGING THE ZONING OF LOT F, TRACT No. 2, OF THE DYBA ADDITION TO THE CITY OF MILES CITY FROM GENERAL COMMERCIAL ZONE TO HIGHWAY COMMERCIAL ZONE, AND PROVIDING FOR A HEARING THEREON.**

**WHEREAS**, Misty Carey, on behalf of Lee James LLC, has made application for the property described as Lot F, Tract No. 2, of the Dyba Addition to the City of Miles City, Montana, to be rezoned from mixed zones of General Commercial District (GC), to Highway Commercial District (HWC) zone;

**AND WHEREAS**, such property is situated within the city limits of the City of Miles City, Montana, and subject to the zoning jurisdiction of the City of Miles City;

**AND WHEREAS**, Section 24-96 of the Code of Ordinances of Miles City, Montana requires that such application 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 September 25, 2018, upon public hearing and deliberation, recommended to the City Council that such zoning change be approved.

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

**Section 1.** Zoning for the following described real property located within the City of Miles City, Custer County, Montana, is hereby rezoned from General Commercial District (GC), to Highway Commercial District (HWC) zone, to wit:

Lot F, Tract No. 2, of the Dyba Addition to the City of Miles City, according to the official plat and survey thereof on file with the Clerk and Recorder in and for Custer County, Montana.

**Section 2.** The City of Miles City Staff Report prepared as part of the review of this application, and attached hereto as Exhibit "A," is hereby adopted as Findings of Fact to support the Council's decision.

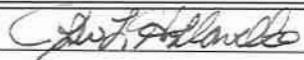
**Section 3.** Prior to final passage, a public hearing shall be held upon this proposed zoning change before the City Council at 6:00 P.M. on the 13th day of November, 2018, in the Council Chambers at City Hall, 17 S. Eighth Street, Miles City, Montana.

**Section 4.** The City Clerk shall give notice of the date, time and place of such hearing by publication in the Miles City Star at least 15 days prior to the date of such hearing, as well as notice by certified mail at least 15 calendar days prior to such hearing to the applicant, landowner, and all adjoining property owners and owners of land within 150 feet of the subject property, containing all information required by, and in accordance with, MCA Sections 76-2-303 and 305, as well as Section 24-97 of the Code of Ordinances of Miles City, Montana.


**Section 5.** This ordinance shall be in full force and effect thirty (30) days after its final passage and approval.

# ORDINANCES

Said Ordinance read and put on its passage this 9<sup>th</sup> day of October, 2018.

  
John Hollowell, Mayor


ATTEST:

  
Lorrie Pearce, City Clerk

**FINALLY PASSED AND ADOPTED** this 13<sup>th</sup> day of November, 2018.

  
John Hollowell, Mayor

ATTEST:

  
Lorrie Pearce, City Clerk

**Miles City City Council**  
**Zone Map Amendment Request From General Commercial to Highway**  
**Commercial**  
**Staff Report**  
**Misty Carey, Lee James, LLC**  
**Public Hearing Date: November 13th, 2018**

*The Miles City Zoning Commission met on September 25, 2018 and held a public hearing to consider a request from Misty Carey of Lee James, LLC for a zone map amendment from General Commercial to Highway Commercial on property northeast of the intersection of Valley Drive East and North Strevell Avenue and addressed as 2317 and 2319 Melrose Avenue, Miles City, MT 59301. Dave DeGrandpre, contract planner with Land Solutions, presented the staff report below (MCZC-2018-01), recommending that the Zoning Commission adopt the staff report as findings of fact and make a recommendation to the Miles City City Council to approve the zone map amendment from General Commercial to Highway Commercial.*

*At the public hearing one person spoke in support of the proposed zone map amendment and three people spoke in opposition.*

*After the close of the public hearing, the Zoning Commission discussed the proposed zone map amendment and passed a motion recommending this zone map amendment for approval by the City Council on a 3-1, vote.*

**Staff Recommendation: Approve**

**Recommended Zoning Motion:** Having reviewed and considered the staff report, application materials, public comment, recommendation of the Zoning Commission, and all information presented, I hereby adopt the findings presented in the staff report and move to approve the Lee James, LLC zone map amendment.

**Alternatives:**

1. Approve the application with modifications
2. Deny the application based on the Council's findings of non-compliance with the applicable criteria contained within the staff report; or
3. Open and continue the public hearing on the application, with specific direction to staff or the applicant to supply additional information or to address specific items.

**Background Information**

Misty Carey, on behalf of Lee James LLC, has requested an amendment to the City of Miles City Zoning Map to rezone one existing lot totaling approximately 0.29 acres / 12,458 square feet, from General

Commercial to Highway Commercial. The property is located northeast of the intersection of Valley Drive East and North Strevell Avenue and addressed as 2317 and 2319 Melrose Avenue, Miles City, MT 59301. The applicant's intent in requesting the proposed zone change is to make it possible to apply for a conditional use permit to operate a medical marijuana dispensary.

**A. Applicant**

Misty Carey, Lee James, LLC  
508 West Arnold Street  
Bozeman, MT 59715

**B. Owner**

Lee James, LLC  
508 West Arnold Street  
Bozeman, MT 59715

**C. Location and Legal Description of Property**

The property is located northeast of the intersection of Valley Drive East and North Strevell Avenue and addressed as 2317 and 2319 Melrose Avenue, Miles City, MT 59301 – see vicinity map below. The legal description of the property is Lot F, of Tract No. 2, of the Dyba Addition located in Section 27, Township 8 North, Range 47 East, P.M.M., City of Miles City, Custer County, Montana.



#### **D. Existing Land Use(s) and Zoning**

The property is currently occupied by two vacant buildings. The existing zoning is General Commercial. The General Commercial zone is intended to provide for commercial districts in close proximity to and serving the ordinary shopping needs of residents and visitors, and which do not attract large volumes of traffic. Examples of general commercial uses include community oriented retail establishments, eating establishments, hardware stores, auto parts stores, grocery and convenience stores, neighborhood lodges and assembly facilities, banks and other financial institutions, medical and dental clinics, professional and personal services, print shops, fitness centers, and other similar uses serving the commercial needs of the community.

#### **E. Proposed Land Use(s) and Zoning**

The proposed land use is a medical marijuana dispensary and the proposed zoning is Highway Commercial. The Highway Commercial zone is intended to provide for commercial oriented uses around highways and arterials that rely on convenient automobile access. Examples of highway oriented businesses include overnight accommodations, casinos, gas stations, eating and drinking establishments, hardware stores, grocery stores, vehicle and equipment sales, and retail. In the Highway Commercial district, medical marijuana dispensaries are a conditional use and thus the applicant will need to obtain a conditional use permit in the event the proposed zone change is approved.

#### **F. Adjacent Zoning and Land Uses**

*North:* Zoning – County C-1 Commercial. Land Uses – Commercial business (Lennox Heating and Cooling).

*East:* Zoning – General Commercial. Land Uses – Vacant land.

*South:* Zoning – General Commercial. Land Uses – Parking lot of Omni Center.

*West:* Zoning – General Commercial. Land Uses – Commercial business (Regan Plumbing and Heating).





**G. Size**

The property is approximately 0.29 acres / 12,458 square feet

**H. General Land Use Characteristics**

The general land use characteristics of the area can be described as auto-oriented commercial.

**Evaluation of Zone Change Criteria**

The following is an evaluation of the zone change request under the criteria outlined in 76-2-304, M.C.A. and in section 24-96(c) of Miles City’s Zoning Regulations. In considering the criteria the analysis must show that the zone change accomplishes criteria 1-4. Criteria 5-12 must be considered. A favorable decision on the proposed application must find that the application meets all of criteria 1-4 and that the positive outcomes of the amendment outweigh negative outcomes for criteria 5-12.

**1. Is the proposed zone change in accordance with the Miles City Growth Policy?**

Yes. The future land use map in Miles City’s growth policy identifies future land uses for properties outside of Miles City limits only. As the property in question is within Miles City limits, it does not have a designation on the future land use map. However, Miles City’s Growth Policy states, “Miles City also intends to ensure that new development is compatible with

*existing development by adopting zoning that generally extends the existing pattern of development (i.e., more residential near existing residential areas and more commercial near existing commercial areas)."* The property is surrounded by commercial land uses, with the existing pattern of development along Valley Drive East between Leighton Blvd. and the Baker Highway (US 12) being primarily auto-oriented commercial. While surrounding zoning is General Commercial and County C-1 Commercial, the surrounding development patterns are compatible with the Highway Commercial district's permitted uses and regulations. As a result a change from General Commercial to Highway Commercial will not result in incompatible development patterns in the area.

Additionally, the proposed zone change advances multiple objectives of the growth policy:

Economy objective 2.2: *Encourage infill development on vacant lots and in vacant buildings.* The proposed zone change would facilitate the use of an existing vacant building within City limits.

Land use 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.* The proposed zone change would allow the property owners to gain economic return from their investments. If the zone change is approved, Miles City zoning regulations and permit processes would help to ensure that other public and private interests are not unreasonably compromised or impacted by future development or land uses.

Based on this information, the proposed zone change generally complies with Miles City's Growth Policy.

**2. Is the proposed zone change designed to secure safety from fire and other dangers?**

Yes. The property is served by Miles City Fire and Rescue and Miles City Police Department. The property is accessible by Valley Drive East (a principal arterial) which provides emergency vehicle access. The proposed zone change from General Commercial to Highway Commercial is not likely to adversely impact safety from fire and other dangers.

**3. Is the proposed zone change designed to promote public health, public safety, and the general welfare?**

Yes. The health, safety, and general welfare of the public will be upheld through Miles City regulations and specifically through the Highway Commercial district regulations, which specify permitted and conditional uses as well as regulations for setbacks, building height, and lot coverage. Based on this information public health, safety, and general welfare will be promoted in the event of the proposed zone change is approved.

**4. Is the proposed zone change designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements?**

Yes. The subject property is served by Miles City water and sewer. Adequate access to the property is provided from Valley Drive East to the west. School facilities and bus services are

available to the property if necessary. However, it is unlikely that the zone change would impact Miles City schools as residential uses are not permitted in the Highway Commercial district. No parks are immediately adjacent to the property. Based on the allowed uses in the Highway Commercial district, the proposed zone change is not likely to place additional demand on Miles City's parks. Mail delivery and utilities are available to the property.

Based on the above information, the proposed zone change will facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other facilities.

**5. Does the proposed zone change provide reasonable provision of adequate light and air?**

Yes. The property is currently developed with two one-story vacant buildings. The property is bordered to the north by a two-story commercial building, to the east by vacant land, to the south by a large parking lot, and to the west by a one-story commercial building. Given this information there is currently adequate light and air on the property. Furthermore, Miles City's zoning regulations and building codes are intended to provide for adequate light and air, which will apply to any future development or use of the property. Based on this information the proposed zone change provides reasonable provision of adequate light and air.

**6. How would the proposed zone change effect motorized and non-motorized transportation systems?**

The proposed zone change is not likely to have a significant impact on motorized or non-motorized transportation. As the current buildings on the property are vacant, any future use will increase the number of vehicles going to and from the site, though it is unlikely that the level of increased traffic will have a detrimental impact on traffic flows or safety on Valley Drive East. In terms of non-motorized transportation, Valley Drive East is not heavily traveled by pedestrians or bicycles as there are currently no sidewalks or bike lanes and adjacent land uses are auto-oriented.

In the end the proposed zone change will not likely change the overall development pattern of the site given that the allowed uses and standards in the Highway Commercial district are similar to what exists on the subject property currently. As a result, the proposed zone change will have little, if any, impact on the motorized or non-motorized transportation systems.

**7. Does the proposed zone change promote compatible urban growth?**

Yes. Development patterns along Valley Drive East between Leighton Blvd and the Baker Highway (US 12) are predominantly auto-oriented commercial uses, which are in-line with the Highway Commercial district. The proposed zone change will promote compatible urban growth by further encouraging development patterns which currently exist along Valley Drive East.

**8. Does the proposed zone change consider the character of the district, and its peculiar suitability for particular uses?**

Yes. The Highway Commercial zoning designation is intended to provide for commercial oriented uses around highways and arterials that rely on convenient automobile access. Valley



Drive East between Leighton Blvd and the Baker Highway (US 12) is classified as a principal arterial and primarily serves auto-oriented commercial uses in this area of the City. While this portion of Valley Drive East contains both Highway Commercial and General Commercial zoning designations, overall the development pattern along Valley Drive East between Leighton Blvd and the Baker Highway is compatible with the character of the Highway Commercial district and is generally suitable for allowed uses in the district.

**9. Would the proposed zone change conserve the value of buildings and encourage the most appropriate use of the land?**

Yes. The proposed zone change would modify what land uses are considered permitted and conditional on the property. Residential uses would no longer be allowed, although a wider array of commercial uses would be permitted. As the property is adjacent to a principal arterial and has an established auto-oriented development pattern, it is better suited for commercial uses permitted in the Highway Commercial district than residential uses which are permitted in the General Commercial district. Based on this information the proposed zone change may conserve the value of buildings and encourage the most appropriate use of the land

**10. Would the proposed zone change be considered illegal spot zoning?**

The following is an evaluation of the Little Factors for Spot Zoning based on legal precedent established in *Little v. Board of County Com'rs*, 193 Mont. 334 (1981) and other judicial decisions.

In the Little case, the Court noted that for a zone change to be considered illegal spot zoning usually all three of the below factors are present.

*1. Is the proposed land use significantly different from the prevailing use in the area?*

No. The property is surround by auto-oriented commercial uses. Because the area is predominately highway oriented commercial, the proposed land use would not be significantly different from the prevailing uses in the area.

*2. Is the area rather small from the perspective of the number of separate landowners benefited from the proposed change?*

Yes. A zone change requested by one landowner is small from the perspective of the number of separate landowners benefited from the proposed change.

*3. Would the change be special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public?*

No. The proposed zone change is being requested by one landowner to provide the opportunity to apply for a conditional use permit to operate a medical marijuana dispensary. In this sense, the proposed zone change could be viewed as special legislation designed to benefit one landowner. However, it is not at the expense of surrounding landowners as the potential development patterns and uses allowed in the Highway Commercial district would not be dissimilar to what exists on the site currently.

11. Does the proposed zone change correct an inconsistency in the zoning?

No. The zone change does not correct an inconsistency in the zoning.

12. Does the proposed zone change address changing conditions or further a specific public challenge?

No. The proposed zone change does not address changing conditions or further a specific public challenge.

## **Appendix A**

Table of Permitted and Conditional Uses in the General Commercial and Highway Commercial districts

<b>General Commercial</b>		<b>Highway Commercial</b>	
<b>Permitted Uses</b>	<b>Conditional Uses</b>	<b>Permitted Uses</b>	<b>Conditional Uses</b>
General commercial uses up to 15,000 square feet	General commercial uses in excess of 15,000 square feet	Highway oriented commercial uses up to 30,000 square feet	Highway oriented commercial uses in excess of 30,000 square feet
Continued use of residences	Wireless communication facilities	Accessory uses associated with primary use	Wholesale
Multifamily dwellings		Schools	Wireless communication facilities
Accessory uses associated with primary use		Public parks, buildings, and playgrounds	Day care centers
Bars and taverns		Religious institutions	Medical marijuana providers
Schools and other educational facilities		Animal rescue shelters	
Public parks, buildings, and playgrounds		Recreational vehicle parks	
Religious institutions		Amateur radio antenna support structures, antenna support structures, alternative antenna support structures, antennae, and amateur radio antennae in compliance with section 24-70(c).	
Day care centers		Minor utility installations	

General Commercial		Highway Commercial	
Permitted Uses	Conditional Uses	Permitted Uses	Conditional Uses
Home occupations			
Accommodations serving up to ten guest rooms			
Animal rescue shelters			
Neighborhood lodges and places of assembly			
Recreational vehicle parks			
Amateur radio antenna support structures, antenna support structures, alternative antenna support structures, antennae, and amateur radio antennae in compliance with section 24-70(c).			
Minor utility installations			

CITY OF MILES CITY  
Zoning Commission

Box 910  
Miles City, MT 59301

September 26, 2018

Mayor Hollowell and City Council Members,

**RE:** Proposed re-zone for the property located at 2317 and 2319 Melrose Avenue, Miles City. The legal description of the property is Lot F, of Tract No. 2 of the Dyba Addition. The owner of said property is Lee James, LLC – Misty Carey.

The Miles City Zoning Commission conducted a public hearing on September 25, 2018 to consider a zone map amendment for the above described property from a General Commercial zone to a Highway Commercial zone.

After reviewing the proposal and comments from the public hearing, the Zoning Commission recommends *to approve* the re-zone of the property.

Respectfully,



LeRoy Meidinger, Chairman  
Zoning Commission

**Proposed Re-Zone  
KannaKare  
2317 & 2319 Melrose Ave.**

Lee James, LLC  
c/o Misty Carey  
508 W. Arnold  
Bozeman, MT 59715

Robert & Joni Magnuson  
2304 Valley Dr. E.  
Miles City, MT 59301

Regan Plumbing & Heating  
PO Box 1164  
Miles City, MT 59301

Omni Corp.  
PO Box 879  
Miles City, MT 59301

Matthew Kercheval  
702 N. Earling; Trl #13  
Miles City, MT 59301

# Affidavit of Publication

STATE OF MONTANA }  
County of Custer } ss.

## LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the City Council for the City of Miles City will hold a PUBLIC HEARING for a proposed zone change on Tuesday, November 13, 2018, at 6:00 p.m. in the City Hall Conference Room at City Hall, 17 S. 8th Street, Miles City, Montana, for the following:

**ORDINANCE NO. 1328:** AN ORDINANCE CHANGING THE ZONING OF LOT F, TRACT No. 2, OF THE DYBA ADDITION TO THE CITY OF MILES CITY FROM GENERAL COMMERCIAL ZONE TO HIGHWAY COMMERCIAL ZONE, AND PROVIDING FOR A HEARING THEREON

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 written protests will be received until 12:00 noon, November 13, 2018, at the City Clerk's office at 17 S 8th Street, Miles City, Montana, and 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, November 13, 2018, at 6:00 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 October 12, 2018)  
MNAXLP

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 1328.** 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  
October 12, 2018.

Signed Mary Rose Bovee  
Subscribed and sworn to before me this 12<sup>th</sup>  
day of October, 2018  
Tabatha Hallman

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

