

ORDINANCE NO. 021609

A LAND USE REGULATION ORDINANCE PURSUANT TO CHAPTER 211 OF THE TEXAS LOCAL GOVERNMENT CODE, ENTITLED "MUNICIPAL ZONING AUTHORITY," AND PURSUANT TO THE TEXAS TRANSPORTATION CODE SECTION 683, SUBSECTION E, ENTITLED "JUNKED VEHICLES: PUBLIC NUISANCE; ABATEMENT," IN ORDER TO REGULATE THE USE OF LAND IN DISTRICT R-1 (SINGLE FAMILY); PROVIDE UNIFORM REGULATIONS FOR LAND DEVELOPMENT IN SUCH DISTRICT; PROVIDE FOR ENFORCEMENT OF SUCH REGULATIONS; SET PENALTIES AND REMEDIES FOR VIOLATIONS OF THE ORDINANCE; PROVIDE FOR SEVERABILITY; PROVIDE A REPEALER; AND ESTABLISH AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Mountain City, Texas has determined that it is in the best interest of the City, lot owners within District R-1, and persons who may purchase lands contained within District R-1 of the City of Mountain City that there be established and maintained a uniform ordinance for the development, maintenance and use of the property covered thereby in order to provide for orderly growth, homogenous land use, and ensure the availability of adequate public facilities within said District; and

WHEREAS, such ordinance shall serve a public purpose by protecting existing areas and uses, avoid undue population concentration and lessen street congestion, limit development that would not be conducive to desirable and attractive growth, and maintain the integrity of residential neighborhoods;

WHEREAS, the City Council of the City of Mountain City has determined that this ordinance is enacted to promote the health, safety, morals, and the general welfare of the community by regulating development within the R-1 District;

NOW, THEREFORE, the City Council of the City of Mountain City hereby declares that all property within District R-1 of the City of Mountain City shall be subject to the following restrictions, unless a written waiver is specifically granted by the City Council of the City of Mountain City:

**SECTION ONE
DEFINITIONS**

"Ancillary Building" shall mean a structure, the use of which is incidental, appropriate, and subordinate to that of the principal structure on the same lot.

"Front yard" shall mean a yard across the full width of the lot from the front wall of a residence to the front line of the lot.

"Junked vehicle" shall have the same meaning as that given to it in Texas Transportation odd. Section 683.071 as now enacted or hereafter amended.

"Lot" shall mean and refer to lots zoned R-1 within the limits of the City of Mountain City, Texas, on which there is or will be built a single family dwelling.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a lot.

"Properties" shall mean and refer to that certain real property hereinbefore described.

"Rear Yard" shall mean a yard across the full width of the lot from the rear wall of a residence to the rear line of the lot.

"Residence" shall mean a single family home providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Side Yard" shall mean a yard between the side wall of a residence and the adjacent side line of the lot, and extending from the front wall of a residence to the rear wall of a residence.

"Structure" shall mean anything constructed or erected on the ground including, but not limited to, buildings, sheds, cabins, garages, and other similar forms.

SECTION TWO ARCHITECTURAL CONTROL

1. No residence, fence or other structure of any kind may be built upon a lot until the plans and specifications have been submitted to the City Council of the City of Mountain City and approved by it in writing. The City Council shall approve said plans and specifications unless in its majority opinion the finished product would materially and detrimentally affect the value of the land and properties in Mountain City, or the finished product does not meet the restrictions as listed herein.
2. A copy of the approved plans and specifications of a residence shall be kept on file by the City of Mountain City.

SECTION THREE EXTERIOR AND LOT MAINTENANCE

1. It shall be unlawful for the owner and/or occupant of any lot in the R-1 District to allow or permit weeds, tall grass, rubbish, brush, or any other unsightly or objectionable or unsanitary matter, to accumulate or remain on such lot.
2. Receptacles and propane storage tanks located on a lot must be concealed from view from any public street.
3. No trash, rocks or debris are to be placed on an adjacent lot at any time.
4. Building sites must be kept reasonably clean during construction, and construction debris must be kept away from adjacent lots and streets.
5. Whenever any condition in violation of this section is found to exist on any lot within the R-1 District, the owner and/or occupant of such lot shall be notified by the City Council, in writing, to correct, remedy or remove the condition within ten (10) days after such notice, and it shall be unlawful for a person to fail to comply with such notice. Such notice shall be observed personally on the owner and/or occupant, or shall be given by letter, addressed and mailed to such owner and/or occupant at his last known address.
6. In the event that the owner and/or occupant of such lot fails to correct, remedy or remove such condition as described herein, after notice to do so is given in accordance with this section, then the City may do such work to correct, remedy or remove such condition, or cause such to be done, and pay therefore and charge the expenses incurred thereby to the owner and/or occupant of such lot. Such expenses shall be assessed against the lot upon which the work is done, or shall be billed directly to the owner and/or occupant at the discretion of the City Council. The doing of such work by the City shall not relieve the owner and/or occupant from prosecution for failure to comply with such notice.
7. Whenever any work is done by the City under the provisions of this section, the Mayor, on behalf of the City, shall file a statement of such expenses incurred thereby with the County Clerk. Such statement shall give the amount of the expenses and the date or dates on which the work was done.

8. After the statement provided in subsection 7 above is filed, the City shall have a privileged lien on the lot upon which the work is done, to secure the expenses thereof. Such lien shall be second only to tax liens and liens for street improvements, and the amount shall bear interest at the rate of ten percent (10%) per annum from the date the statement is filed. Suit may be instituted and recovery and foreclosure of the lien may be had in the name of the City.

SECTION FOUR. USE RESTRICTIONS

1. COMPLETION OF CONSTRUCTION

All lot owners are required to complete construction of approved building projects within one (1) year from the date of receiving approval from the City Council. Such approval of projects automatically is rescinded for projects not completed within one (1) year, unless an extension of time is granted by the City Council, in writing.

2. RESIDENCE HEIGHT RESTRICTIONS

Only single family residences, not to exceed two stories in height and with a minimum two car attached garage, may be erected on any residential lot.

3. MINIMUM FLOOR AREAS

The area of any newly constructed residence will have a minimum of 2000 square feet of floor space, exclusive of garage and porches, patios, driveways, terraces, or attachments.

4. EXTERIOR WALL MATERIALS

The exterior walls of any residence erected on a lot shall consist of brick or stone on all front and side exterior walls unless otherwise approved by the City Council. Second floor exterior walls may be masonry-type siding when said walls are not directly above an exterior first floor wall. Use of materials other than stone or brick on any exterior walls must be approved by the City Council and will be considered on the overall appearance and durability of the proposed finish.

5. SET BACK LINES

(a) No residence shall be located nearer than fifty (50) feet from the front property line of the lot. No residence shall be located nearer than twenty (20) feet from the sides of lots nor nearer than thirty five (35) feet from the rear property line.

(b) No ancillary building shall be located closer to a lot's front property line than the rear of the residence. No ancillary building shall be located closer than ten (10) feet from the side or rear property lines.

6. PROHIBITED USES

Lots shall be used for residential purposes only. No building on the lots shall be used as a commercial garage, manufacturing, repair or storage facility. Limited commercial use by the resident is allowed provided such use is not offensive to neighbors and does not give the appearance of a commercial establishment. Should commercial use cause a nuisance to other residents of the City, such use must be terminated within thirty (30) days of receiving written notice from the City Council.

7. RESIDENTIAL PARKING

- (a) Location. All required residential parking shall be located onsite.
- (b) Garages. All residences must have a garage. Garages must be side or rear entry with a minimum of 480 square feet. If a garage is located at least 20 feet behind the front building façade of the residence, the owner may apply for a permit to have a front entry to that garage.
- (c) Storage of Vehicles. Trailers, motor homes, camper cabins, non-street legal motorcycles (including all-terrain vehicles, dirt or moto-cross bikes, or similar type vehicles), boats, farm machinery, or similar equipment shall not be parked or stored on any residential or agricultural lot or the adjacent street except when in conformity with the following provisions:
 - (1) Such equipment shall be located beside or behind the primary structure and back from the nearest corner of the front façade of the residence a minimum of 10 feet
 - (2) Loading and Unloading. Notwithstanding other requirements of this Section, such, equipment may be parked anywhere on a residential premise not to exceed 48 hours for the purpose of loading and unloading only.
 - (3) Living or Sleeping. No such equipment shall be used for living, sleeping or housekeeping purposes for longer than 14 consecutive days nor more than 45 days in one year when parked or stored on any lot.
- (d) A junked vehicle, including a part of a junked vehicle that is visible at any time of the year from a public place or public right-of-way, is hereby declared a public nuisance pursuant to Texas Transportation Code Section 683, Subchapter E, as may be amended, and this ordinance.
 - (1) A "junked vehicle" for purposes of this ordinance is a self-propelled vehicle that does not have lawfully attached to it an unexpired license plate, or a valid motor vehicle inspection certificate, and is:
 - (a) wrecked, dismantled or partially dismantled, or discarded; or
 - (b) inoperable and has remained inoperable for more than:
 - (i) 72 consecutive hours, if the vehicle is on public property, or
 - (ii) 30 consecutive days, if the vehicle is on private property.
 - (2) Upon determination by the City Council that a public nuisance pursuant to this subsection exists, written notice of such public nuisance shall be given by certified mail with a five-day return requested, or by personal delivery, to the last known registered owner of the nuisance, each lien holder of record of the nuisance, and the owner or occupant of the property on which the nuisance is located. Where a nuisance is located in a public right-of-way, such notice will be given to the adjacent property owner.
 - (3) The content of the notice shall include a description of the nuisance, that the nuisance must be abated no later than the 10th day after the date the notice is mailed or hand delivered, and the date a public hearing is to be held by the City Council, regarding abatement and removal, which shall be governed by Texas Transportation Code sections 683.075 and 683.076 as now enacted or hereafter amended. The hearing shall be held not earlier than the 11 to day after the date of the service of notice.
 - (4) The City Council shall conduct said hearing on the nuisance pursuant to Texas Transportation Code Section 683.076, and shall have the authority to order abatement and removal of such nuisance. A resolution of the City Council requiring removal of the nuisance shall include the

vehicle's description, vehicle identification number, and license plate number, where such information is available at the location of the nuisance. At the Hearing, the junked vehicle is presumed to be inoperable, unless demonstrated otherwise by the owner.

- (5) A junked vehicle, including a part of a junked vehicle, may be removed to a scrap yard, a motor vehicle demolisher, or a suitable site operated by Hays County.
- (6) After a junked vehicle is removed by the City, the City shall notify the Texas Department of Transportation, no later than the fifth day after removal of the nuisance, with appropriate identifiers and instructions to immediately cancel registration of the vehicle.
- (7) Any relocation of a junked vehicle, that has been declared a public nuisance by the City Council, to another location within the city limits of Mountain City after a proceeding for its abatement and removal has commenced, shall have no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.
- (8) Upon entry of a resolution for abatement and removal, the City or its designee shall be ordered by the City Council to dispose of the junked vehicle pursuant to Texas Transportation Code Section 683.078 as now enacted or hereafter amended.
- (9) Actions by the City pursuant to this ordinance shall not be deemed as any limitation upon the City to enforce junked vehicle statutes pursuant to Texas Transportation Code Sections 683.071-683.073.
- (10) A person commits an offense if the person maintains a public nuisance as described herein. Such offense is a misdemeanor punishable by a fine not to exceed \$200. A court of proper jurisdiction shall order abatement and removal of the nuisance on conviction.

(e) No commercial trailers, house trailers, or trucks in excess of one (1) ton shall be parked or stored on a lot or public street for a period of time in excess of twenty-four (24) hours in a 120 day period. This restriction also applies to heavy equipment in view of the street. Special conditions may occur that will cause a need to exceed this time period. Any variance to this subsection must be approved in writing by the Mayor or his or her designee.

8. SIGNS

- (a) One (1) "FOR SALE" or "FOR RENT" sign, not to exceed five (5) square feet in size shall be allowed on a lot when the lot is actively being marketed for sale.
- (b) Builders may, during construction, construct signs and storage areas as may be reasonable and necessary for such construction.
- (c) Temporary signs for the purpose of school support, political support and those incidental to holiday decorations, may be displayed during the period immediately preceding and for up to 14 days after the applicable event, unless otherwise provided for by state or federal law.
- (d) Residents shall display a small sign with their address that does not exceed 500 square inches and said sign harmonizes with the exterior decor of the residence.

9. PROHIBITED RESIDENTIAL USE

No temporary structure, trailer, mobile home, basement, garage, or ancillary building shall be erected or used at any time as a residence. No existing structure may be moved onto a lot without written approval of the City Council.

10. NOXIOUS OR OFFENSIVE ACTIVITIES PROHIBITED

- (a) No noxious or offensive activity shall be carried on or conducted on any lot, nor shall any activity be engaged in that is an annoyance or a nuisance to owners of the other lots.
- (b) No part of a lot shall be used for the sale, display, or storage of junk, used automobiles, or any activity which shall constitute a public or private nuisance,
- (c) Explosives, fireworks or firearms will not be discharged within the city limits and no hunting shall be allowed within the city limits.

11. OIL DEVELOPMENT / WATER WELL DRILLING PROHIBITED

No water well shall be drilled on any lot, nor shall any oil and/or gas development, including the drilling of any well, be permitted on any lot.

12. SANITARY REGULATIONS

- (a) All federal, state, county, and city sanitation laws and regulations must be complied with by lot owners. Septic tank and drainage systems must meet the capacity and design requirements of the County. All septic systems designs must be approved by the County and the City Council prior to construction.
- (b) A residence constructed on a lot shall have no less than two (2) three-piece bathrooms, each with a lavatory, commode, and shower stall and/or tub.
- (c) Animals and/or animal manure may have diseases, viruses, and pathogens such as avian flu, hantavirus, E.coli, salmonella, campylobacter, etc. It shall be unlawful for any person to maintain any shelter, pen, enclosure, yard or area for an animal in an unsanitary or offensive manner. All shelters, pens, runs, enclosures, yards, and areas shall be clean and sanitary to prevent disease transmission, to prevent noxious and unpleasant odors, and to keep the premises free from rodents, flies, parasites, and vectors. In this regard periodic sanitation, disinfection, and sterilization shall be performed and manure, droppings, and waste material shall be removed. As an exception to disposal, manure, droppings and waste may be properly composted in bins with tight lids to prevent vermin, flies, other insects, and obnoxious odors.

13. FENCES, WALLS AND HEDGES

- (a) Fences erected on a lot shall be limited as follows: a fence may be erected along the rear lot line and the side lot lines, but no closer to the street than 1/2 way between the rear and the front building lines of the dwelling house, and may be up to six (6) feet in height. No fences shall obstruct the view of traffic at street intersections or curves.
- (b) Decorative type fences will be allowed on the front line of the property, but may not exceed a height of three (3) feet. In the event hedges are used instead of fences, the same height restrictions will apply. Fences must be of a type approved by the City, Council, and must be maintained in good condition and appearance at all times decorative fence shall obstruct the view of traffic at street intersections or curves.

- (c) Propane or butane tanks at the front or side of a residence must be enclosed by a privacy fence or by appropriate landscaping.

14. SHRUBS, TREES AND DRAINAGE

No trees or shrubs may be planted in any area that would obstruct the view of traffic at any street intersection or curve. Any trees that obstruct the view of the streets at intersections or curves must be kept trimmed or removed by the lot owner, in order to provide a clear view of the intersection or curve for traffic. Each lot owner that has a drainage swale on their lot will keep it free and clear of anything that would obstruct the drainage.

15. YARD LIGHTS

- (a) Each residence in District R-1 shall have installed, in the front yard, a yard light mounted on a post. The height of the post and yard light is not to exceed ninety (90) inches and must have a light sensitive switch. Yard lights shall be maintained in good working order for the safety of residents and shall be lit from dusk to dawn. Overhead lights (mercury vapor or similar lighting systems) on telephone /power poles are not permitted within the City without written City Council approval.
- (b) Each residence shall display a sign containing its appropriate street number in a manner that can be read from the street at night. This may be through the use of reflective numerals, by lighting the numerals or other means as long as the address is readily visible from the street. This sign shall not exceed 500 square inches and must harmonize with the exterior decor of the residence. Numerals stenciled on the driveway of the residence will not satisfy this requirement.

16. ANCILLARY BUILDINGS

Ancillary buildings may be built independently of a residence, but must be no nearer to the street than the rear building line of the residence. Ancillary buildings must be built of the same quality as the residence. The location and design of the ancillary building must be approved in writing by the City Council before being constructed.

17. DRIVEWAYS

- (a) Driveways shall be constructed of reinforced concrete not less than 12 feet wide and not less than 4 inches thick. Some point within the first ten (10) feet of every driveway shall have an elevation higher than that of the street where the driveway meets the street across the entire width of the driveway, unless otherwise required by State law.
- (b) Driveway drainpipes shall have a minimum drain of 18" or equal in diameter. Larger or longer drainpipes shall be installed if necessary to handle drainage based upon a 25-year flow frequency. Drainage structures under private driveways must have a net drainage opening area of sufficient size to permit the free flow of water without backwater or backflow.

18. PLAT

A copy of the final plat of each lot shall be given to Mountain City Council for approval, prior to building of residence.

19. ANIMALS

- (a) The 5th Amended Hays County Animal Control Ordinance No. 20893 (An Ordinance of The Commissioners' Court Of Hays County, Texas. To Establish A Rabies Control Program, Require The Licensing And Restraint Of Certain Animals, Designate A Local Animal Control Authority, Regulate Dangerous Dogs, Declare A Public Nuisance And Provide Penalties Pursuant To Chapters 822 And 826 Of The Texas Health & Safety Code) and all of its amendments are adopted by reference and declared to be a part of the Mountain City Land Use Ordinance. Enforcement is by Hays County under an inter-local agreement.
- (b) The following provisions are an addendum to Paragraph 19(a) enforceable by the City Council Under the provisions of Section Six of this Ordinance.
- (1) No poultry, rabbits, pigeons, sheep, goats, horses, jennies, or other animals shall be raised, bred or kept on any lot except as provided below. Lot owners may keep cats dogs or other common indoor household pets.
 - (2) No swine may be kept on any tract under any circumstances.
 - (3) A student who is in FFA, 4H or a private school or home school program may apply to the City Council for a variance from the prohibition in Paragraph 19(b)(1). Should any allowed project create a nuisance, such activity shall be immediately terminated upon written notice from the City Council.
 - (4) Kennels, pet shops and animal breeding operations are prohibited within the City.
 - (5) Prohibition on slaughter. Animals may not be slaughtered in the City.

20. ADJUSTMENTS, WAIVERS OR VARIANCES

Unless otherwise stated herein, any adjustments to, waivers of, or variances from these ordinance restrictions are for the purpose of alleviating hardships for owners and assisting in the orderly development of the City. Only the City Council, in writing, may grant such adjustments, waivers or variances.

SECTION FIVE EASEMENTS

1. The City of Mountain City herein reserves easements over each lot for water, electric, telephone, gas and any other utility lines, both overhead and underground, and drainage swales and pipes which now exist or may hereafter be emplaced, provided, however, that such facilities shall be placed to the greatest extent possible along the boundaries of said premises.
2. No structure shall be placed or permitted to remain in any City easement unless first approved in writing by the City Council. The easement on any lot and all improvements in or on it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

SECTION SIX GENERAL PROVISIONS

1. ENFORCEMENT

The City Council of the City of Mountain City shall have the right to enforce by any proceeding at law all restrictions now or hereafter imposed by the provisions of this ordinance.

2. VIOLATIONS

Any person who violates any of the provisions of this Ordinance, or who fails to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of two hundred dollars (\$200.00) per offense. Each day that the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein. Persons who have been given written notification of any violation of a provision of this Ordinance must contact the City officer who sent the written notification within 14 days of its receipt and present a written plan to resolve the violation. The written plan must be presented to the City Council for approval at the next monthly Council meeting following notification of the violation.

3. AUTHORITY

The City Council may amend or revoke any exemption, permit, adjustment, waiver, or variance previously granted. Adult animals that have an existing written variance by the City Council are grandfathered in at the adoption of this ordinance.

4. SEVERABILITY

Invalidation of any one of these restrictions by law, judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect it.

5. REPEALER

All ordinances, sections, or parts of ordinances heretofore adopted by the City of Mountain City that are in conflict with the provisions of this ordinance are hereby repealed or amended as indicated.

6. EXISTING CONDITIONS EXEMPT

Structures constructed prior to February 13, 2006 are allowed to remain until such time as the structure requires major rebuilding. At such time, any non-conforming structure shall be rebuilt in accordance with this ordinance.

7. DURATION AND AMENDMENT

These restrictions shall become effective from the adoption date of this ordinance. These restrictions may be altered, amended or cancelled by a majority vote of the Mountain City Council or by a three-fourths majority of the adult property owners. Any amendment, alteration, or cancellation of any of the foregoing restrictions must be in writing and filed with the County Clerk of Hays County, Texas, in order to be of force or effect.

PASSED and approved this ___ day of September, 2014.

APPROVED:

Tiffany Curnutt
Mayor

ATTEST:

Ellis Craig
City Secretary