

COMPREHENSIVE ZONING ORDINANCE
of the
TOWN OF MOUNTAINAIR, TORRANCE COUNTY, NEW MEXICO

October 25, 2005

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ORDINANCE NO. 2005-02

AN ORDINANCE ADOPTING COMPREHENSIVE
ZONING REGULATIONS AND A ZONING MAP
FOR THE TOWN OF MOUNTAINAIR, NEW MEXICO

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF
MOUNTAINAIR, NEW MEXICO AS FOLLOWS:

SECTION 1. TITLE.

These regulations shall be known as the “Comprehensive Zoning Ordinance” of the
Town of Mountainair, New Mexico and shall be referred to herein as “this Ordinance”.

SECTION 2. PURPOSE.

The regulations and restrictions of this Ordinance are designed to avoid congestion in the
streets and public ways; to secure safety from fire, flood and other dangers; to promote
the general welfare of the community; to protect and conserve water resources; to prevent
the overcrowding of land; to facilitate adequate provisions for transportation, water,
sewerage, schools, parks, and other community requirements; to conserve the value of
property; and to encourage the most appropriate use of land throughout the Town of
Mountainair.

SECTION 3. APPLICABILITY.

No structure shall be constructed, placed, or maintained, and no land use commenced or
continued within the Town of Mountainair except as authorized by this Ordinance. The
provisions of this Ordinance are held to be minimum requirements to carry out the
purpose of this Ordinance and are not intended to interfere with any other laws,
covenants, or ordinances. Whenever any provisions of this Ordinance are more or less
restrictive than other laws, covenants, or ordinances, then whichever is more restrictive
shall govern.

SECTION 4. DEFINITIONS.

- A. **Word Forms.** Words used in the present tense including the future tense, and
words used in the future tense include the present tense. The singular number
includes the plural number and the plural number includes the singular number.
The words “shall” and “must” are mandatory, and the words “may” is permissive.
- B. **Definitions.** For the purpose of this Ordinance, standard dictionary definitions are
used except for certain words or phrases used herein which shall be defined as
follows:
 - 1. “Accessory” means subordinate and incidental to a principle use or

structure on the premises.

2. “Boarding, Rooming, or Lodging House” means a building other than a hotel, motel, or restaurant where lodging, with or without meals, is provided for compensation. Such building shall not contain more than five guest rooms. This definition includes a “Bed and Breakfast” enterprise.
3. “Building” means a structure, of more or less permanent construction, having a roof and intended to be used for sheltering people, animals, property, or business activity.
4. “Conditional Use” means a use which may be or become a nuisance or hazard to neighboring properties if proper safeguards are not taken. Conditional uses require a permit following review and approval by the Town.
5. “Contiguous” mean touching or separated only by a public right-of-way.
6. “Dwelling, Multiple” means a structure containing two or more dwelling units.
7. “Dwelling, Singular” means a dwelling unit which is not physically connected to any other dwelling units.
8. “Dwelling Unit” means any structure or part of a structure containing one or more connected rooms to be occupied by one family for living and sleeping purposes. Dwelling unit may include a mobile home, manufactured housing, or site-built housing.
9. “Family” means one or more persons occupying a dwelling unit, provided that unless all members are related by blood, marriage, adoption, or legal assignment, no such family shall include more than five persons.
10. “Floor Area” means the total gross area of all floors of a building, expressed in square feet measured from the outside surface of exterior walls.
11. “Floor Area Ratio” means the relationship of the floor area to the lot area, computed by dividing the floor area by the lot area.
12. “Grade” means the average of the finished ground level at the center of all walls of a building.
13. “Height” means the vertical distance measured from the lowest ground elevation to the highest point on a structure. When applied to buildings, height means the vertical distance from the grade to the highest point of

the roof line.

14. "Home Occupation" means a business or commercial activity which is conducted within a dwelling unit or an accessory structure within a residential zone district, and which is clearly secondary to the residential use of the premises.
15. "Lot" means a tract or parcel of land platted and placed on the Torrance County Clerk's record in accordance with laws and ordinances and with access to public right-of-way.
16. "Lot Area" means the area contained within the boundary lines of the lot.
17. "Lot, Corner" means any lot bordering on two or more streets at their intersection.
18. "Lot, Double Frontage" means any lot bordering on two parallel or approximately parallel streets.
19. "Lot Line, Front" means the boundary line of a lot bordering on a street or public right-of-way.
20. "Lot Line, Rear" means the boundary line of a lot which is opposite and most distant from the front lot line and does not connect to the front lot line.
21. "Lot Line, Side" means any lot boundary line which is not a front lot line or a rear lot line.
22. "Mobile Home" means a movable or portable housing structure larger than 40 feet in body length, 8 feet in width or 11 feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes. A mobile home does not include recreational vehicles, or modular or pre-manufactured homes that are built to the standards of the New Mexico Uniform Building Code.
23. "Manufactured Housing" means a multi-section manufactured home or modular home that is a dwelling unit with a heated area of at least thirty-six (36) by twenty-four (24) feet and at least eight hundred sixty-four (864) square feet and constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] and with the regulations made pursuant thereto

relating to permanent foundations.

24. “Mobile Home Park” means an area of land on which space is leased or rented for occupancy for 30 days or more by mobile homes, and which contains permanent facilities and services for the use of the mobile home occupants.
25. “National Flood Insurance Program” means the Federal program promulgated by the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The Town is a participating community in this program and has adopted flood plain management regulations for designated flood-prone areas within the Town.
26. “Non-conforming Uses, Lots or Structures” means any building, structure or portion thereof, or use of any building or land which does not conforming to the regulations of this Ordinance and which lawfully existed on the effective date of the regulations to which it does not conform.
27. “Overlay Zone” means a zone district placed over other zone districts such that special zoning requirements are imposed in addition to those of the underlying zone district. Development within the overly district must conform to the requirements of both zoning district or the more restrictive of the two districts.
28. “Parking, Off-Street” means an area on a lot used for required parking of motor vehicles as regulated by this Ordinance.
29. “Permissive Use” means any use authorized in a particular zone district established by this Ordinance.
30. “Person” means any individual, estate, trust, receiver, association, club, corporation, company, firm, or other entity.
31. “Planning Commission” means the Planning Commission of the Town of Mountainair.
32. “Premises” means any lot or combination of contiguous lots held in single ownership, together with the development thereon.
33. “Public Right-of-Way” means a strip of land intended for use as a thoroughfare which has been dedicated to the public by deed, or reserved by play, or otherwise acquired by the Town, County, State or Federal Government.
34. “Recreational Vehicle” means a vehicle which is designed or used as

temporary living quarters for recreation, camping, or travel, and which may be a self-propelled motor vehicle or designed to be towed or mounted on a motor vehicle. Recreational vehicles shall not be stored within the front setback of a lot for a time period exceeding 7 days, and not permanently connected to utilities.

35. “Setback” means the minimum allowable distance between any building and the nearest lot line of the lot upon which it is located, consisting of open space, and unoccupied by any structure except as otherwise provided in this Ordinance. Walls, fences, signs, and public utilities poles are exempt from setback restrictions.
36. “Setback, Front” means the minimum allowable distance between any building and the front lot line of the lot on which such building is located. No more than one front setback shall be designated on corner lots or double frontage lots.
37. “Setback, Rear” means the minimum allowable distance between any building and the rear lot line of the lot one which such building is located. On double frontage lots, the rear setback shall be designated on the opposite side of the lot from the designated front setback.
38. “Setback, Side” means the minimum allowable distance between any building and a side lot line of the lot on which such building is located. On corner lots, a side setback shall be designated along one of the lot lines bordering a road or street.
39. “Sign” means a structural device using graphic symbols or written messages to communicate information to the public by directing attention to a product, place, activity, person, institution, or business.
40. “Structure” means anything constructed or erected with a permanent location on the ground, or attached to something having a permanent location on the ground.
41. “Town” means the Town of Mountainair, Torrance County, New Mexico.
42. “Town Council” means the Mountainair Town Council.
43. “Town Clerk” means the chief administrative officer of the Town as so designated by the Town Council.
44. “Variance” means a relaxation of the terms of this Ordinance where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of this Ordinance would result in

unnecessary hardship. As used in this Ordinance, a variance may be authorized only for area, height, dimension, distance, setback, and off-street parking requirements. Financial gain or loss shall not be the determining factor in deciding a variance.

45. “Vehicle” means a mechanical device for transporting people or property on a road or highway, with the exception of devices moved by human or animal power.
46. “Zone District” means a mapped area of the Town of Mountainair where regulations governing the use of buildings, structures, and land are uniform.
47. “Zoning Officer” means an appointee of the Town Council who shall administer the provisions of this Ordinance.

SECTION 5. GENERAL PROVISIONS.

- A. Access to Structures. All structures shall be appropriately located on lots in order to provided safe and convenient access for servicing, fire protection, and any required off-street parking or loading.
- B. Accessory Buildings. One or more accessory buildings may be placed on a lot provided that no accessory building will exceed the floor area of the building which is the principal use on the premises, and further provided that no accessory building will be located closer than ten feet from any other buildings on contiguous lots.
- C. Development Plans. Unless otherwise provided herein, any site development plan that is required in this Ordinance shall include the following components:
1. A site plan on a map, to scale, showing boundaries and the locations, dimensions, and purposes of all buildings and structures, existing and proposed.
 2. The location and dimensions of all contiguous streets or roads, on-site utility easements indicating their purpose, and parking and loading areas.
 3. A description of the natural features of the site such as topography and vegetation, any proposed alteration of those natural features, and an identification of any special drainage or flooding conditions on the site.
 4. A description of the buildings and structures on contiguous lands.
- D. Hazardous Materials. Bulk storage of toxic substances or hazardous materials within the Town of Mountainair shall be above ground and contained in a manner approved by the Fire Department.
- E. Historic Structures. Historic structures shall be exempt from district standards.
- F. Home Occupations. Any activity defined by this Ordinance as a home occupation shall be subject to the following requirements:
1. Only members of the residing family and no more than one other person shall be engaged in the home occupation.
 2. There shall be no exterior indication of the home occupation except for one, non-illuminated sign that is no larger than five square feet in area.
 3. Exterior storage of materials necessary for the home occupation is allowed only if it is surrounded by a solid wall or fence sufficient to provide a visual barrier to any contiguous residential properties.

4. Not more than 25 percent of the floor area of the dwelling unit shall be devoted to the home occupation, nor more than 400 square feet floor area of an accessory building.
 5. No equipment or process shall be used in a home occupation which creates a nuisance such as noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses, off the premises.
- G. Mobile Home Installation. Regardless of any setback regulations provided in this Ordinance, no mobile homes shall be located within 20 feet of any other dwelling unit. Mobile homes shall be limited to residential use only. Within 30 days following occupancy, mobile homes shall be connected to adequate utilities, provided with skirting of a durable material, and stabilized and anchored in accordance with regulations promulgated by the Manufactured Housing Act of New Mexico (60-14-1 et seq. NMSA 1978).
- H. Multi-Section Manufactured Housing. Regulations regarding multi-section manufactured housing shall be the same as site-built single family housing, provided installation is consistent with Manufactured Housing Act (Chapter 60, Article 14 NMSA 1978) and with regulations made pursuant thereto relating to permanent foundations.
- I. Political Signs. Signs relating to a political campaign prior to an election may be permitted on any lot provided such signs shall not be placed more than 90 days prior to the election and shall be removed within 10 days following the election.
- J. Recreational Vehicles. A recreational vehicle may be stored on a lot, provided it is not used as additional living quarters, and is not connected to permanent utilities. A recreational vehicle may be used as temporary living quarters under the following conditions:
1. For temporary quarters for visitors, for no more than seven consecutive days.
 2. As temporary living quarters during the building of a permanent structure for not more than six consecutive months. For this use, a permit must be obtained from the zoning commission prior to recreational vehicle being occupied as a temporary residence.
- K. Vision Clearance. At all road or street intersections, no obstructions to view shall be placed or maintained between three feet and eight feet above the roadway level in a triangular space at the road or street corner on a corner lot. Such triangular space shall be bonded by the corner property lines and a diagonal line connecting points that are 20 feet in distance from the property line intersection.

SECTION 6. ZONE DISTRICT BOUNDARIES.

- A. Districts. In order to carry out the provisions of this Ordinance, the Town of Mountainair is hereby divided into zone districts which are described in the following sections. The regulations prescribed in this Ordinance shall apply within the corporate limits of the Town of Mountainair.
- B. Zoning Map. The boundaries of all zone districts within the Town of Mountainair are hereby established as shown on the MOUNTAINAIR ZONING MAP which shall be made a part of this Ordinance as if fully described herein.
- C. Interpretation. Where due to the scale, lack of detail, or illegibility of the official MOUNTAINAIR ZONING MAP, there is any uncertainty, contradiction, or conflict as to the intended location of any zone district boundaries shown therein, interpretations concerning the exact location of zone district boundary lines shall be determined by the Town Council with the advice of the Planning Commission.
- D. Multiple-Zoned Lots. Circumstances may justify the need to designate more than one zone district on a single lot. In such cases, zone district boundaries within a multiple-zoned lot shall be more fully described in the MOUNTAINAIR ZONING MAP by showing any necessary dimensions of zone districts in relation to existing property lines.
- E. Annexation. Any requires or proposal for annexation of territory to the Town of Mountainair shall be filed and processed concurrently with an application for an amendment to the MOUNTAINAIR ZONING MAP as provided in this Ordinance. Zoning within annexed areas must be consistent with contiguous zoning, or must be in accordance with the Comprehensive Plan of the Town of Mountainair.

SECTION 7. R-1 CONVENTIONAL RESIDENTIAL ZONE.

- A. Intent. The purpose of this zone district is to provide for the development of residential neighborhoods consisting of singular dwellings and certain other uses which are compatible to the residential character of this district. Density shall be limited to one dwelling unit per lot.
- B. Permissive Uses. Any of the following permissive uses are allowed in this zone district:
 - 1. One dwelling unit per lot.
 - 2. Accessory buildings, structures, or uses, subject to the provisions of this Ordinance.

3. Home Occupation, subject to the provisions of this Ordinance.
 4. Family day care home, provided the activity is licensed by the State as a family day care home.
 5. Storage of a recreational vehicle, provided it is not used as additional living quarters and is not permanently connected to utilities.
 6. Public utility structure, provided its location is based on an appropriate master plan that has been approved by the Town Council.
 7. Public parks and recreation areas.
- C. Conditional Uses. The following uses may be allowed in this zone district only upon permit granted by the Planning Commission in accordance with this Ordinance:
1. Boarding, rooming, or lodging house.
 2. Church or other religious building uses as a place of worship.
 3. School, public or private, with incidental facilities, provided that a development plan for the site has been approved by the Town Council.
 4. Subdivision provided that they comply with the Subdivision Regulations for the Town of Mountainair.
- D. District Standards. The following regulations apply to all land uses in this zone district:
1. Minimum lot size shall be 6,250 square feet.
 2. Setbacks shall be maintained as follows:
 - a. Front setback shall be no less than 15 feet.
 - b. Side setback shall be no less than five feet.
 - c. Rear setback shall be no less than ten feet, however, on lots where the rear lot line is contiguous to a dedicated alley, then a rear setback is not required.
 3. Off-street parking space is required by this Ordinance.

SECTION 8. R-2 CLUSTER RESIDENTIAL ZONE.

- A. Intent. The purpose of this zone district is to accommodate higher density residential development and limited nonresidential uses which are compatible to the residential character of this district. Multiple dwellings are allowed in this district, and may include apartments, townhouses, and condominiums.
- B. Permissive Uses. Any of the following permissive uses are allowed in this zone district:
1. All uses permissive in the R-1 zone district.
 2. Multiple dwellings, provided they are connected to centralized water and sewer systems.
- C. Conditional Uses. The following uses may be allowed in this zone district only upon permit granted by the Planning Commission in accordance with this Ordinance:
1. All uses conditional in the R-1 zone district.
 2. Non-commercial library, museum, or art gallery.
 3. Medical clinic or dental office.
 4. Laundromat.
 5. Personal Services (Barber/beauty shop, physical therapy, etc.)
 6. Gas/fuel pumping services provided that they comply with all state, federal, and environmental regulations.
- D. District Standards. The following regulations apply to all land uses in this zone district:
1. Minimum lot size shall be 12,500 square feet for multiple dwellings and 6,250 square feet for singular dwellings.
 2. Multiple dwellings are subject to the following restrictions:
 - a. The floor area ration shall not exceed 0.5 on any lot.
 - b. The gross density of a lot shall not exceed 20 dwelling units per acre.
 3. Setbacks shall be maintained as follows:
 - a. Front setback shall be no less than 15 feet.

- b. Side setback shall be no less than ten feet.
- c. Rear setback shall be no less than ten feet.
- 4. Off-street parking space is required by this Ordinance.

SECTION 9. C-B COMMERCIAL BUSINESS ZONE.

- A. Intent. The purpose of this zone district is to provide for the commercial and business needs of the community. This zone district includes highway-related commercial activities, offices and entertainment facilities, retail sales, and service providers. Development in this zone district shall not be detrimental to nearby residential uses. Special conditions may be imposed by the Town Council giving considerations to any recommendations of the Planning Commission.
- B. Permissive Uses. Any of the following permissive uses are allowed in this zone district:
 - 1. All uses permissive in the R-2 zone district.
 - 2. Retail Commercial establishments.
 - 3. General and professional offices.
 - 4. Business and personal services.
 - 5. Banking and financial services.
- C. Conditional Uses. The following uses may be allowed in this zone district only upon permit granted by the Planning Commission in accordance with this Ordinance:
 - 1. All uses conditional in the R-2 zone district.
 - 2. Hotels and motels.
 - 3. Eating and drinking establishments.
 - 4. Funeral homes and crematories provided that they comply with Federal and State regulations.
 - 5. Government facilities for restricted and public use.
 - 6. Motor vehicle sales and services, including commercial garages, provided

that:

- a. Any repair work where loss of automotive fluids can occur shall be conducted entirely within an enclosed building.
- b. Outdoor storage of materials shall be enclosed by a solid wall or fence sufficient to provide a visual barrier.
- c. Outdoor storage of vehicles shall be limited to no more than three vehicles per enclosed service bay awaiting repair and/or deliver.

7. Motor vehicle washing services (including mobile services) must comply with all State and Federal regulations.

8. Kennel, veterinary hospital, animal grooming parlor, or pet sales store.

9. Small scale processing associated with a commercial business establishment provided that all processing activities are conducted within a building and shall not produce off-site impacts which would be disruptive to contiguous properties.

10. Construction contractors, waste removal services, and building trades, including storage are enclosed on all sides by a solid wall or fence at least six feet high.

11. Self storage mini-warehouses provided that:

- a. There shall be adequate on-site driveways to accommodate vehicular access to individual storage units.

D. District Standards. The following regulations apply to all land uses in this zone district:

1. There shall be no minimum lot size, provided that land uses are in conformance with the provisions of this Ordinance.

2. Setbacks shall be maintained as follows:

- a. Front setback shall be no less than 15 feet.
- b. Side setback shall be no less than 10 feet.
- c. Rear setback shall be no less than 15 feet.

3. Off-street parking space is required by this Ordinance.

SECTION 10. I-M INDUSTRIAL MANUFACTURING.

- A. Intent: The purpose of this zone district is to provide for large scale commercial and business development of the community. This zone district includes large scale manufacturing activities. Special conditions may be imposed by the Town Council given consideration to any recommendation by the Planning Commission.
- B. Permissive Uses:
1. All uses permissive in the C-B zone district.
 2. Manufacturing and commercial production facilities.
 3. Cement Mixing and dispensing facilities.
- C. Conditional Uses:
1. All uses conditional in the C-B zone district;
 2. Fuel wholesalers and storage (e.g., gasoline and other petroleum products) provided that all facilities shall not be placed within 300 feet of any residential structure unless sufficient blast, explosion, or fire confinement structures are installed in accordance with State regulations;
 3. Mining, processing or stockpiling of rock, sand, gravel, clay or similar materials.
 - a. Back filling shall be made with non-noxious and non-combustible materials.
 - b. Peaks and depressions of the land resulting from the operation shall be reduced to a surface, which is in substantial conformity to the surrounding topography, and measures are taken to minimize erosion.

SECTION 11. S-U SPECIAL USE ZONE.

- A. Intent. This zone district provides for types of developments which require special consideration because of their magnitude, unusual nature, infrequent operations, questionable impact on surrounding property, or other similar reason. The boundaries of this zone district shall be defined as needed on a case-by-case basis and shall be designated by the Town Council following the amendment procedures provided in this Ordinance. Special conditions may be imposed by the Town Council giving consideration to any recommendation of the Planning

Commission. The Town Council may not grant a zone change for the establishment of a Special Use Zone district unless satisfactory provisions have been made:

1. To assure that a compatibility of land uses is maintained in the general area and that the proposed use is not in conflict with the development policies and other elements of the Comprehensive Plan for the Town of Mountainair.
 2. To preserve the integrity and character of the area in which the Special Use Zone district will be located, and to preserve the utility of property in contiguous zone districts.
 3. To assure that the Special Use Zone will not become detrimental to the public health, safety, or general welfare of the Town of Mountainair.
- B. Plan Requirement. Each application for a Special Use Zone must declare the proposed use for the zone district and must be accompanied by a site development plan as specified by this Ordinance.
- C. Removal of Zones. In the event that a use authorized as a Special Use Zone is permanently discontinued for a period of at least 90 days, the Special Use Zone district may be canceled and removed under the provisions for an amendment to this Ordinance. That area delineated by a discontinued Special Use Zone district shall be rezoned to an appropriate zone district as determined by the Town Council following a recommendation by the Planning Commission.
- D. Designated Uses. A Special Use Zone district may be established for, but not limited to the following uses designated by the Town Council:
1. Airport, subject to the regulations of State or Federal aviation agencies.
 2. Auto Dismantling yard, or general salvage operation, provided that:
 - a. All activities are conducted within an enclosed building or within an area enclosed on all sides by a solid wall or fence at least six feet high.
 - b. Inoperative automobile bodies or salvage materials may not be stacked higher than the required surrounding wall.
 - c. The site for such operation shall exceed five acres.
 3. Cemetery provided that the site shall contain at least two acres.
 4. Fairgrounds, recreational complex, stadium, rodeo ground.

5. Fuel wholesalers and storage (e.g., gasoline and other petroleum products) provided that all facilities shall not be placed within 300 feet of any residential structure unless sufficient blast, explosion, or fire confinement structures are installed in accordance with State regulations;
6. Mobile Home Park, subject to the following regulations:
 - a. A mobile home park shall be served by community water and sewer systems and constructed to specifications acceptable with State or Federal environmental pollution standards.
 - b. Maximum density shall be eight mobile homes per acre.
 - c. Each mobile home shall be situated on a space that is no less than 5,000 square feet.
 - d. At least two off-street parking spaces per mobile home are required.
 - e. No mobile home shall be located within 20 feet of any other mobile home or structure. A mobile home shall be at least 25 feet from a public right-of-way and shall be no less than ten feet from any property line of the mobile home park.
 - f. A common area for recreational use by park residents shall be developed and situated in a central location within the mobile home park. At least 300 square feet of usable open space shall be designated for the common area per mobile home in the mobile home park.
 - g. A mobile home park shall have at least one entrance drive from a public road or street, and access to individual units shall be from private drives within the mobile home park. Private driveways shall be no less than 30 feet in width.
7. Towers (telecommunications, water storage, etc.) shall be in compliance with all Federal and State regulations.
8. Mental and psychiatric facility.

SECTION 12. C-B-D CENTRAL BUSINESS DISTRICT

- A. Intent. The purpose of this zone district is to allow for existing and future high density commercial development. The Central Business District shall be generally described as the buildings and lands abutting Broadway between Sunset Avenue

and Railroad Avenue as well as Main Street between Roosevelt Avenue and Summit Avenue. Land uses in this zone district are predominately business and commercial in nature, but mixed uses are acceptable, including residential dwelling units. Because structures in this zone district are encouraged to continue as they are, they will not be considered non-conformities.

- B. Conditional Uses. All uses in this zone district shall be conditional uses which may be allowed only upon permit granted by the Planning Commission in accordance with this Ordinance.
- C. District Standards. The following general standards apply to all development in this zone district:
 - 1. Every reasonable effort shall be made to preserve the distinguishing qualities and historical character of the existing buildings.
 - 2. Alterations and new construction shall be encouraged to architecturally blend with the appearance of other existing structures in this zone district. Materials on street facing facades may include stucco, brick veneer, stone veneer, tile, glass, etc. Materials on street facing facades that shall not be allowed include wood siding, metal siding, vinyl siding and any other building product designed for residential and manufactured housing use.
 - 3. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced.
 - 4. Because of the high density nature of this zone district, setback, off-street parking and vision clearance requirements set forth in this ordinance shall not apply.
 - 5. Multi-story structures shall be encouraged for future developments within this zone district.
 - 6. “Metal Buildings” and exposed cinder block buildings and additions shall be allowed within this zone district provided that they are generally not visible from the street.

SECTION 13. R-R RURAL RESIDENTIAL DISTRICT.

- A. Intent. The purpose of this zone district is to provide for low density residential development and certain activities which are compatible with rural residential neighborhoods. Residential development in this zone district is characterized by large lots and shall not exceed a density of one dwelling unit per acre.
- B. Permissive Uses. Any of the following permissive uses are allowed in this zone

district:

1. All uses permissive in the R-1 zone district.
2. The Town of Mountainair adopts by reference all of the NM Right to Farm Act.
3. Appropriate agricultural activities subject to the following restrictions.
 - a. Any building, pen, or corral for the containment of livestock shall be at least 30 feet from any existing dwelling unit.
 - b. Areas devoted to farm animals, including buildings and structures, shall be constructed and maintained to discourage the concentration and breeding of insects and rodents which are detrimental to human habitations.
 - c. Sale of agricultural products raised on the premises.

C. Conditional Uses. The following uses may be allowed in this zone district only upon permit granted by the Planning Commission in accordance with this Ordinance:

1. All uses conditional in the R-1 zone district.
2. Kennel, veterinary hospital, animal grooming parlor, or pet sales store.
3. Greenhouse, nursery or landscaping services.
4. The processing and packaging of goods from agricultural products and/or agricultural by-products.

D. District Standards. The following regulations apply to all land uses in this zone district:

1. Minimum lot size shall be one acre.
2. Cluster housing as defined in Section 8 is permitted. However, the maximum number of dwelling units cannot exceed the one dwelling unit per acre requirement of this Section.
3. Setbacks shall be maintained as follows:
 - a. Front setback shall be no less than 20 feet.
 - b. Side setback shall be no less than 10 feet.

- c. Rear setback shall be no less than 20 feet.
- 4. Off-street parking space is required by this Ordinance.

SECTION 14. OFF-STREET PARKING.

- A. Off-Street Parking Requirements. Whenever any new building or structure is erected, off-street parking spaces shall be provided on the premises in accordance with this Ordinance. Existing buildings or structures need to supply the required off-street parking a spaces only to the extent that open space is available on the premises. Parking spaces may be located on any portion of the lot but shall not obstruct on-site circulation or access to the premises. Unless authorized by the Town of Mountainair, parking is not allowed within the public right-of-way.
- B. Required Parking Spaces. The minimum number of off-street parking spaces to be provided on premises shall be as follows:
 - 1. Banks, offices, services establishments, and retail businesses require one space per 300 square feet of floor area.
 - 2. Bowling alleys require four spaces per alley.
 - 3. Clubs, lodges, and fraternal organizations require one space per 200 square feet of floor area.
 - 4. Eating and drinking establishments require one space per 100 square feet of floor area.
 - 5. Industrial, manufacturing, and wholesaling establishments require one space per two employees on the largest shift.
 - 6. Laundromats require one space per three washing machines.
 - 7. Medical clinics and dental offices require five spaces per doctor.
 - 8. Motels and other lodging facilities require one space per unit and one space per two employees on the largest shift.
 - 9. Places of public assembly, including churches, community centers, theaters, and gymnasiums require one space per four seats when fully occupied.
 - 10. Residential buildings and mobile homes require two spaces per dwelling unit.

- C. Mixed Uses. For mixed uses on the premises, the total requirements for off-street spaces shall be the sum of the fractional requirements of the various uses computed separately.
- D. Parking Design Standards. The following standards shall be applied to the required off-street parking areas:
 - 1. All parking areas must have access to a public right-of-way.
 - 2. All driveway entrances shall be at least 30 feet wide to facilitate vehicular turning into the parking area.
 - 3. Each parking space shall consist of an area not less than nine feet by 20 feet.

SECTION 15. ADMINISTRATION.

- A. Administrative Official. The Council shall appoint a Zoning Officer to administer the provisions of this Ordinance. The Zoning Officer may also serve in some other capacity as an employee or appointed official of the Town of Mountainair.
- B. Inspection. The Zoning Officer has the authority to conduct an inspection of buildings, structures, and the use of land to determine compliance with this Ordinance. This provision does not grant right to entry without due process, if necessary. The Zoning Officer shall provide for on-site inspections and other relevant information which may be requested by the Town Council or the Planning Commission as necessary to carry out the purpose of this Ordinance.
- C. Violations: Complaints and Notifications. The Zoning Officer may institute any appropriate actions or proceedings whenever there is probable cause to believe there is a violation of this Ordinance. Any person aggrieved by an apparent violation of this Ordinance shall file a written complaint with the Zoning Officer who shall immediately investigate the complaint to determine if a violation of this Ordinance is found to exist. Whenever the Zoning Officer finds probable cause to believe that a violation of this Ordinance exists, whether acting on independent initiative or in response to a complaint, the Zoning Officer shall notify the person responsible for the alleged violation in writing. The notification shall order the necessary correction to be made within 60 days following the date of notification. Any person who fails to comply with the notification order shall be subject to penalties as stated in this Ordinance.
- D. Information and Records. The Town shall maintain an office to supply the public with information concerning this Ordinance and shall maintain the official MOUNTAINAIR ZONING MAP in an updated form. A “Zoning Action File” shall be maintained and shall contain records which include the following categories:

1. Amendments to the Zoning Ordinance and Maps.
2. Building Permit Applications (with Elevation Certificates as appropriate).
3. Conditional Use Permits.
4. Mobile Home Installations.
5. Nonconformance Certificates.
6. Site Development Plans.
7. Variances allowed under this Ordinance.
8. Zoning Appeals.
9. Zoning Violations.

SECTION 16. DEVELOPMENT REVIEW.

- A. Requirement for Local Review. For the purpose of this Ordinance, no building or structure shall be erected nor mobile home installed upon any premises within the Town of Mountainair without being reviewed by the Zoning Officer. Building permit applications shall be submitted to the Zoning Officer for review and signature before applying for a State Building Permit. Mobile home installation permits shall be reported to the Zoning Officer upon issuance to the mobile home owner. Elevation Certificates are required for all structures built or placed in designated flood plains within the Town.
- B. Review Process and Fee. An administrative fee must be paid to the Town of Mountainair prior to any consideration in the development review. The Zoning Officer shall determine if a variance, zone change, or conditional use permit is indicated, and if so, will notify and advise the appropriate person of subsequent procedures required by this Ordinance. The Zoning Officer shall also review development proposals for compliance with the National Flood Insurance Program. All State Building Permit applications shall be returned to the applicant within three working days after receipt by the Zoning Officer.

SECTION 17. NON-CONFORMANCE CERTIFICATE.

- A. Definition. Within the zone districts established by this Ordinance, or subsequent amendments hereto, there exists lots, structures, and uses of land and structures which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or subsequent amendment. Such lots, structures or uses are non-conformities. It is

the intent of this Ordinance to allow these non-conformities to continue. However, as non-conformities are discontinued or removed, structures and future uses where these non-conformities previously existed will be required to be in compliance with this ordinance.

- B. Non-conformance Certificate. Non-conformities, upon discovery, shall be issued a Non-conformance Certificate by the Zoning Officer in accordance with the procedures established in this Ordinance. Upon receipt of a written notification from the Zoning Officer, it shall be the responsibility of owners of non-conforming property to apply to the Zoning Officer for a Non-conformance Certificate within 60 days after the date of notification. Failure to accept the Non-Conformance Certificate under the provisions of this Ordinance shall be considered a violation of this Ordinance.
- C. Expansion. A non-conformity shall not be enlarged, expanded, or extended. However, the addition of a lawful use to any portion of a non-conforming building which existed prior to the enactment of this Ordinance shall not be deemed an extension of the nonconformity.
- D. Abandonment. Whenever a non-conformity has been discontinued or abandoned for a period of one year or more, that non-conformity shall not be reestablished, and any future use shall be in conformance with the provisions of this Ordinance.
- E. Restoration. If a non-conformity is damaged or destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, then restoration must be for a permitted use.
- F. Non-conforming Lot Size. Any lot of record existing prior to the effective date of this Ordinance, which fails to meet the minimum area requirements, may be developed or improved provided that setback and other requirements of the lot are in conformance with the provisions of this Ordinance. A Non-conformance Certificate will not be required for non-conforming lots.
- G. Non-conforming Structure. Any structure built prior to the effective date of this Ordinance which fails to meet the requirements for setback and parking will not require a non-conformance certificate; but it still is considered a non-conformity subject to any other regulations in this Ordinance.
- H. Central Business District. Due to the intent to preserve the architectural integrity of this district, structures, lots, setbacks and off-street parking in this zone district are exempt from conditions in this section. Uses other than off-street parking are still required to be in compliance with this section.
- I. Vested Rights. Nothing in this Ordinance shall require any change in plans, construction, or designated use of a building for which a building permit has been issued prior to enactment of this Ordinance, or amendments hereto.

SECTION 18. CONDITIONAL USE PERMIT.

- A. Permit Required. Conditional uses that are established by this Ordinance shall not be allowed except upon the review and approval for a permit issued by the Planning Commission, which shall be guided in making a decision by the criteria set forth in this section.
- B. Application. Any request for a Conditional Use Permit shall be submitted with an administrative fee to the Zoning Officer on a prescribed application form obtainable at the Town offices. The Zoning Officer shall transmit the completed application and any supplementary information to the Planning Commission for review and consideration at their next scheduled meeting. To the extent possible, all contiguous property owners shall be notified of the Planning Commission meeting at which the Conditional Use Permit application will be considered for approval.
- C. Guidelines. A Conditional Use Permit shall not be approved unless satisfactory provisions have been made concerning the following issues, where applicable:
1. Accessibility to the property and proposed structures on the premises, with particular reference to vehicular and pedestrian safety, traffic control, off-street parking, and emergency access in case of fire, flood, or catastrophe.
 2. Connections to water and sewer services and other public utilities, with reference to necessary easements or dedications.
 3. Storm-water drainage control and flood protection with reference to the National Flood Insurance Program
 4. Solid waste management systems and the potential for hazardous waste.
 5. The economic, noise, glare, odor effects of the conditional use on contiguous properties.
 6. General compatibility with contiguous properties and other properties in the area.
- D. Limitations. Conditional Use Permits issued in accordance with the requirements of this Ordinance shall be considered permanent, with the following exceptions:
1. For any conditional uses that have an exceptional tendency, because of their nature or character, to create an adverse impact on neighboring properties, the Planning Commission may limit the term of the permit to a specified length of time after which the permit shall expire and may be renewed. An application for renewal of the Conditional Use Permit may

be submitted and processed in the same manner as the original application, with a reduced administrative filing fee.

2. Where there has been a significant change in the physical extent, operations, or character of a permitted conditional use, the Planning Commission may require a renewal of the original Conditional Use Permit. Significant change shall be determined by the Planning Commission, based on the scheduled review of the Conditional Use Permit.
3. An approved Conditional Use Permit shall become void one year after the date of approval if the rights and privileges granted thereby have not been utilized.
4. An approved Conditional Use Permit shall become void if, after the use has begun, it ceases on the approved site for a continuous period of one year or more.

SECTION 19. VARIANCES.

- A. Definition. The Planning Commission may approve a Variance from the strict application of area, height, dimension, distance, setback, and off-street parking requirements of this Ordinance. A Variance may be approved in the case of exceptional physical conditions where the strict application of the requirements of this Ordinance would result in a practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of land or building.
- B. Application. Any request for a Variance shall be submitted with an administrative fee to the Zoning Officer on a prescribed form obtainable at the Town offices. The Zoning Officer shall transmit the completed application and any supplementary information to the Planning Commission for review and consideration at their next scheduled meeting. To the extent possible, all contiguous property owners shall be notified of the Planning Commission meeting at which the Variance application will be considered.
- C. Requirements. The Planning Commission may impose any necessary requirements in approving a Variance to assure that the Variance:
 1. Cause no significant hazard, annoyance, or inconvenience to the owners or occupants of nearby property.
 2. Will not significantly change the character of the neighborhood or reduce the value of nearby property.

SECTION 20. AMENDMENTS.

- A. Authority. The Town Council may amend or change any of the regulations, procedures, or zone district boundaries established by this Ordinance.
- B. Application. Any request for an amendment to this Ordinance shall be submitted with an administrative fee to the Zoning Officer on a prescribed application form obtainable at the Town offices. An application may be initiated by the Town acting on behalf of the community at large. The Zoning Officer shall transmit the completed application and any supplementary information to the Planning Commission for review at their next scheduled meeting. The Planning Commission shall prepare and transmit a recommendation in writing to the Town Council within seven days after their review of the proposed amendment is completed. To the extent possible, all contiguous property owners of any land proposed for a zone change shall be notified of the Planning Commission meeting at which the zone change will be reviewed for recommendation to the Town Council.
- C. Public Hearing. Upon receipt of the written recommendations of the Planning Commission, the Town Council shall call for a public hearing in which to make its decisions on an application for amendment to this Ordinance. Notification of the time and place of the public hearing shall be published in a newspaper of general circulation in the Town at least 15 days prior to the hearing. The Town Council shall conduct the public hearing, at which all parties shall have an opportunity to submit data, views, or arguments, orally or in writing, and to examine witnesses testifying at the hearing. A record of the public hearing shall be kept.
- D. Notification by Mail. Whenever a zone change is proposed for an area of one block or less, notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners of land within the area proposed to be changed by a zoning regulation and within 100 feet, excluding public right-of-way, of the area proposed to be changed by a zoning regulation. Whenever a zone change is proposed for an area of more than one block, notice of the public hearing shall be mailed by first class mail to the owners of land within the area proposed to be changed by a zoning regulation and within 100 feet, excluding public right-of-way, of the area proposed to be changed by a zoning regulation. If any notice by first class mail is returned undeliverable, the Town shall attempt to discover the owner's most recent address and shall remit the notice by certified mail, return receipt requested.

SECTION 21. APPEALS.

- A. Right of Appeals. Any person aggrieved by a decision of the Zoning Officer or the Planning Commission in carrying out the provisions of this Ordinance may appeal that decision to the Town Council. An appeal must set forth specifically a

claim that there was an error or an abuse of discretion, or that a decision was not supported by evidence in the matter.

- B. Application. Any appeal following a decision of the Zoning Officer or the Planning Commission shall be made in writing on prescribed forms obtainable at the Town offices, upon payment of an administrative fee, and submitted to the Zoning Officer. Any appeal not submitted within 30 days after the decision which is the subject of the appeal shall not be considered by the Town Council. The Zoning Officer shall transmit all papers involved in the proceedings to the Town Council within seven days after the receipt of the appeal application.
- C. Public Hearing. The decision on an appeal shall be made by the Town Council following a public hearing. Notification of the time and place of the public hearing shall be published in a newspaper of general circulation in the Town at least 15 days prior to the hearing. The Zoning Officer shall notify the applicant, members of the Planning Commission, and a representative of the opponents, if any, of the hearing date.
- D. Stay of Proceedings. An appeal shall stay all proceedings in the action unless the Zoning Officer certifies that a stay will cause imminent peril to life or property. Upon certification, the proceedings shall not be stayed except by order of District Court.
- E. Decision. An appeal shall be decided within 60 days of the date of application of the appeal. A majority vote of the members of the Town Council is required to reverse, change, or affirm a decision made by the Zoning Officer or the Planning Commission.

SECTION 22. ADMINISTRATIVE FEES.

- A. Applications. Any applications required by this Ordinance shall be filed on prescribed forms obtainable at the Town offices and shall be accompanied by an administrative fee. Administrative fees shall not be required where any official of the Town of Mountainair is the moving party. The purpose of an administrative fee is to cover the processing costs, and shall not be refundable. All fees shall be paid to the Town Clerk at the time of application, and shall be made payable to the Town of Mountainair.
- B. Administrative Fees. Administrative fees will be charged as follows:
 - 1. Amendment to this Ordinance \$100
 - 2. Appeal \$50
 - 3. Conditional Use Permit \$25
 - 4. Development Review \$10
 - 5. Variance \$25

SECTION 23. PENALTIES.

Any persons violating any of the provisions of this Ordinance shall upon conviction be subject to a fine not exceeding \$500 or imprisonment for a period not exceeding 90 days, or both such fine and imprisonment, as authorized in 3-17-1 C. NMSA 1978. Any violation continued for a period of 30 days after conviction shall be prosecuted and treated as a separate offense.

SECTION 24. SEVERABILITY.

The provisions of this Ordinance shall be deemed to be severable, and should any part of this Ordinance be declared by the courts to be unconstitutional or invalid, such holdings shall not affect the validity of this Ordinance other than the part so declared to be unconstitutional or invalid.

SECTION 25. REPEAL OF MOUNTAINAIR ORDINANCE No. 97-02.

As of the effective date of this Ordinance, the provisions of any prior ordinance related to zoning and the regulation of manufactured housing and mobile homes for the town of Mountainair shall be repealed and replaced with the new regulations set by this Ordinance.

SECTION 26. EFFECTIVE DATE.

PASSED, APPROVED AND ADOPTED this 8th day of November, 2005.

This Ordinance shall become effective on the 8th day of November, 2005.



Valter Hiller
Mayor, Town of Mountainair

Anna M. Shatt
Town Clerk

Presented for Signature on 2.6.06
[Signature]